

# EXHIBIT 18

Marsha Peterson

Seattle, WA

April 13, 2005

1 THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3 -----  
4 IN RE: PHARMACEUTICAL )  
5 INDUSTRY AVERAGE )  
6 WHOLESALE PRICE ) MDL Docket No.  
7 LITIGATION ) Civil Action 01CV12257PBS  
8 )  
9 -----

10 Deposition Upon Oral Examination  
11 Of  
12 MARSHA PETERSON  
13 -----  
14

15 April 13, 2005  
16 1301 Fifth Avenue, Suite 2900  
17 Seattle, Washington  
18

19  
20 JULIE C. OSWALD, CSR #299-06  
21 COURT REPORTER  
22

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3	FOR THE PLAINTIFF: SEAN R. MATT			
4	Hagens Berman		4	Exhibit Peterson 008, BMS/AWP/000096834 to 6869 130
5	1301 Fifth Avenue, #2900		5	
6	Seattle, Washington 98101		6	Exhibit Peterson 009, BMS/AWP/000059345 to 9406 181
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8	FOR THE DEFENDANT: LYNDON M. TRETTER		8	Exhibit Peterson 010, BMS/AWP/000096936 to 6943 184
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10	875 Third Avenue		10	Exhibit Peterson 011, BMS/AWP/001487883 to 5001 185
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13	FOR THE DEFENDANT: WILLIAM KUSHNER		13	
14	OTN Counsel		14	Exhibit Peterson 013, BMS/AWP/001487651 to 7658 190
15	395 Oyster Point Blvd.,		15	
16	#500		16	Exhibit Peterson 014, BMS/AWP/001487993 to 3385 190
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1	EXHIBIT INDEX	6	1	MR.KUSHNER: William Kushner, divisional	8
2	No. Marked		2	counsel for OTN.	
3			3	Q. Ms. Peterson, the nature of a deposition is I	
4	Exhibit Peterson 028, BMS/AWP/001483808 to 3813	225	4	ask questions and you answer them. Everything has to	
5			5	be verbal so the court reporter can put it down on the	
6	Exhibit Peterson 029, BMS/AWP/00148818 to 8183	225	6	record. So answers that consist of nothing but a nod	
7			7	of the head she can't take down, so we will need you	
8	Exhibit Peterson 030, MBS/AWP/001483218 to 3281	225	8	to answer out loud yes or no.	
9			9	Have you ever had your deposition taken	
10	Exhibit Peterson 031, BMS/AWP/001483343 to 3366	225	10	before?	
11			11	A. No.	
12	Exhibit Peterson 032, BMS/AWP/001487918 to 7940	231	12	Q. If at any point in time you feel the need to	
13			13	take a break, because you need to use the restroom or	
14	Exhibit Peterson 033, BMS/AWP/001487857 to 7882	233	14	you want a drink or it gets too warm in here, please	
15			15	let me know. Okay?	
16	Exhibit Peterson 034, BMS/AWP/001483047 to 3061	234	16	A. Okay.	
17	Seattle, Washington		17	Q. If you have any problems understanding my	
18			18	questions I would ask that you ask me to repeat them	
19			19	because it's important that you do understand and are	
20			20	answering what I ask.	
21			21	A. Okay.	
22			22	Q. Will do you that?	
1	9:10 a.m.	7	1	A. Yes.	9
2	*****		2	Q. Do you understand that you are testifying	
3	MARSHA PETERSON: Being first duly sworn by		3	under oath today?	
4	the Notary Public on oath		4	A. Yes.	
5	testified as follows:		5	Q. Who did you speak with or meet with in	
6			6	preparation for this deposition?	
7	E X A M I N A T I O N		7	A. Lyndon Tretter.	
8	BY MR. MATT:		8	Q. About how long did you meet with him for?	
9	Q. Good morning, Ms. Peterson. I introduced		9	A. Probably six hours yesterday.	
10	myself off the record, but for the record I'm Sean		10	Q. Was anyone present other than Mr. Tretter?	
11	Matt and I represent the plaintiffs in this action		11	A. Will Kushner.	
12	with the law firm of Hagens Berman Sobol Shapiro here		12	Q. Any non-lawyers present in that meeting?	
13	in Seattle. Thank you for coming to your deposition.		13	A. No.	
14	Would you state your name and home address		14	Q. Have you talked with anyone else about this	
15	for the record?		15	deposition?	
16	A. 570 Maria Lane, Roseburg, Oregon, 97470.		16	A. No.	
17	Q. Are you represented by counsel here today?		17	Q. Has anyone sought to influence your testimony	
18	A. Yes, I am.		18	today?	
19	MR. MATT: Would you like to make appearances?		19	A. No.	
20	MR. TRETTER: Lyndon Tretter of Hogan and		20	Q. What documents, if any, did you review in	
21	Hartson for defendants Bristol-Myers Squibb Oncology		21	preparation for this deposition?	
22	and Apothecon, Inc.		22	A. Just basic -- my basic documents. Some basic	

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## 4 (Pages 10 to 13)

1    stuff that was mine. 2    Q. Documents from your files? 3    A. Correct. 4    Q. Do you know whether those documents have been 5    provided to counsel for production to us in this case? 6    A. I believe so. 7    Q. We have a number of your documents that we 8    will go over with you. 9    A. Okay. 10   Q. Did you review anything prepared by your 11   attorneys? 12   A. I don't understand what you are asking. 13   Q. Did you review any written document that was 14   prepared by your attorneys? 15       MR. TRETTER: Something that I created as 16   opposed to a preexisting document on your computer or 17   whatever. 18       THE WITNESS: No. 19   Q. Can you please describe what -- first of all, 20   what is your position with OTN? 21   A. I am currently the manager, western manager 22   of sales.	10	1    A. Yes. 2    Q. What is the geographic territory that you 3    were responsible for as manager of sales? 4    A. It's about two-thirds of the nation. 5    Q. Everything west of the Mississippi? 6    A. There is stuff east of the Mississippi as 7    well. I don't know how many states. It's probably 8    32. I don't know. That's approximately. 9    Q. Where do we draw the line in the midwest, if 10   you can kind of name the states? 11   A. The states farthest east I have are Michigan, 12   and then it goes over to Missouri down through 13   Oklahoma and over -- the farthest one over would be 14   Mississippi, so it kind of comes over like that. 15   Q. And then do you have responsibility for every 16   state west of the Mississippi? 17   A. Correct. 18   Q. When you were regional business development 19   manager what states did you represent? 20   A. Alaska, Washington, Oregon, Idaho, Montana, 21   Wyoming, North and South Dakota, Iowa, Nebraska, 22   Kansas, Missouri, Illinois, Wisconsin, and Minnesota.	12
1    Q. How long have you held that position? 2    A. Three years. 3    Q. Prior to that what did you do? 4    A. I was a regional business development 5    manager, which is a sales rep. 6    Q. How long did you hold that position? 7    A. Two years. 8    Q. The western manager of sales. Is that 9    correct? 10   A. Yes. 11   Q. Have you resided in Roseburg, Oregon 12   throughout the entire tenure of that position? 13   A. Yes. 14   Q. When you were regional business manager where 15   did you reside? 16   A. Roseburg, Oregon. 17   Q. What was your territory? 18   A. In which position? 19   Q. The regional business development 20   management. 21   A. I had 13 states. 22   Q. You were a sales rep for 13 states?	11	1    Q. That's a big territory. 2    Before you were regional business development 3    manager what did you do? 4    A. That was before OTN. 5    Q. Go ahead and give me the company, please. 6    A. I worked for a company called Microgenics. 7    Q. For how long? 8    A. Only about six months, because it got sold. 9    Q. What did you do there? 10   A. At that position I was a regional business 11   development manager as well. 12   Q. What product or service did Microgenics sell? 13   A. Drug testing. 14   Q. What kind of tests? 15   A. They were diagnostic tests for THC and 16   opiates, meth amphetamines. 17   Q. Drug testing? 18   A. Drug testing. Yes. 19   Q. Who were they sold to? 20   A. They were sold to -- I actually can't 21   remember. 22   Q. Prior to working for Microgenics what did you	13

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5 (Pages 14 to 17)

<p>1 do?</p> <p>2 A. Prior to Microgenics I worked for MetPath.</p> <p>3 It's a diagnostic testing company.</p> <p>4 Q. How long did you work there?</p> <p>5 A. I worked for there about a year.</p> <p>6 Q. Where did you live at the time?</p> <p>7 A. I lived in Oregon, the same place, Roseburg.</p> <p>8 Q. What was your territory?</p> <p>9 A. Oregon.</p> <p>10 Q. Were you a sales rep?</p> <p>11 A. Yes, I was.</p> <p>12 Q. What kind of diagnostic testing do they do?</p> <p>13 A. They did all laboratory testing, so you sold the laboratory services to various clinics and offices. It was laboratory services that I sold.</p> <p>14 Q. Prior to working with MetPath what did you do?</p> <p>15 A. I worked for Boehringer Mannheim.</p> <p>16 Q. What did you do there?</p> <p>17 A. I was a capital equipment salesperson. I'm trying to remember my title at the time.</p> <p>18 Q. How long did you hold that position?</p>	<p>14</p> <p>1 worked.</p> <p>2 Q. Is it accurate to say that you weren't involved in the sales of pharmaceuticals prior to working for OTN?</p> <p>3 A. That's correct.</p> <p>4 Q. What is your educational background?</p> <p>5 A. Bachelor of science in medical technology.</p> <p>6 Q. Let's focus for a moment on your position as western sales manager. Who was your supervisor?</p> <p>7 A. Donald Gaddy.</p> <p>8 Q. What is his position?</p> <p>9 A. He is the vice president of sales.</p> <p>10 Q. Where is he located?</p> <p>11 A. Boston.</p> <p>12 Q. Is that where OTN's headquarters is located?</p> <p>13 A. No, San Francisco.</p> <p>14 Q. To the best of your knowledge what is Mr. Gaddy's responsibilities at OTN?</p> <p>15 A. Running the sales department.</p> <p>16 Q. I am going to guess that there are other sales managers besides yourself. Correct?</p> <p>17 A. Correct.</p>
<p>1 A. I was there for eight years.</p> <p>2 Q. And your territory was?</p> <p>3 A. Southern California, Orange County, and Riverside.</p> <p>4 Q. Prior to working there what did you do?</p> <p>5 A. I worked for a company called Hybritech, H-Y-B-R-I-T-E-C-H, a division of Eli Lilly.</p> <p>6 Q. What did you do there?</p> <p>7 A. I sold tumor marker diagnostic tests.</p> <p>8 Q. How long were you employed at Hybritech?</p> <p>9 A. Two years.</p> <p>10 Q. Prior to that what did you do?</p> <p>11 A. I worked for Radiometer, R-A-D-I-O-M-E-T-E-R.</p> <p>12 Q. What did you do there?</p> <p>13 A. I sold microbiology.</p> <p>14 Q. How long did you work at Radiometer?</p> <p>15 A. One year.</p> <p>16 Q. What did you do before that?</p> <p>17 A. I can clump it altogether. I'm a medical technologist by trade, that's my profession, and I worked in laboratories for 10 years out of college.</p> <p>18 So there are quite a few different places that I</p>	<p>15</p> <p>1 Q. What regions?</p> <p>2 A. There is one more region, and that's the eastern region.</p> <p>3 Q. Who is that presently?</p> <p>4 A. Ralph Maesseli, M-A-E-S-S-E-L-I.</p> <p>5 Q. Where does Mr. Maesseli reside?</p> <p>6 A. Boston.</p> <p>7 Q. Has Mr. Gaddy always been your supervisor since you've been western sales manager?</p> <p>8 A. No.</p> <p>9 Q. Who was it before Mr. Gaddy?</p> <p>10 A. Gena.</p> <p>11 Q. She is here in Seattle. Correct?</p> <p>12 A. Correct.</p> <p>13 Q. Is she still employed with OTN?</p> <p>14 A. Yes.</p> <p>15 Q. What does she do presently?</p> <p>16 A. Vice president of marketing.</p> <p>17 Q. When did Mr. Gaddy become your supervisor?</p> <p>18 A. January.</p> <p>19 Q. Of 2005?</p> <p>20 A. Correct.</p>

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6 (Pages 18 to 21)

	18	
1	Q. Prior to Mr. Gaddy succeeding Ms. Cook in 2 that position, how long did Ms. Cook hold that 3 position?	
4	A. Of what?	
5	Q. Of vice president of sales.	
6	A. She has been vice president of sales since 7 January – December or January.	
8	Q. I thought you said she was vice president of 9 marketing?	
10	A. Of marketing, correct.	
11	Q. Prior to becoming vice president of marketing 12 how long, if you know, was she vice president of 13 sales?	
14	A. She is vice president of marketing now. 15 Prior to vice president of marketing she had an 16 interim position of vice president of sales and 17 marketing while they were assigned.	
18	Q. How long did she hold that position?	
19	A. Several months.	
20	Q. While she held that position she was your 21 supervisor. Correct?	
22	A. Correct.	
		19
1	Q. Prior to holding that interim position, I 2 think you called it, what did she do?	
3	A. She was the director of western sales.	
4	Q. Which is not your position. Right?	
5	A. Correct.	
6	Q. When she was director of western sales was 7 she your supervisor?	
8	A. Yes.	
9	Q. How long was she in that position?	
10	A. Well, since she started OTN, which was two 11 years plus, a little over two years.	
12	Q. So in your position as western sales manager 13 you have only had two supervisors, Ms. Cook followed 14 by Mr. Gaddy?	
15	A. I have to think about that.	
16	Q. Take your time.	
17	A. I had one person before Gena, but it was for 18 a very short period of time. I had Robyn Sippel was 19 my boss. I forgot. It was a long time ago.	
20	Q. When she was your supervisor what was her 21 position?	
22	A. Vice president of sales and marketing,	
		20
1	interim.	
2	Q. We are going to be speaking with Ms. Cook so 3 I will ask her more details about her job when she was 4 in this position.	
5	When she was your supervisor, when she was 6 director of western sales, did she supervise any other 7 sales employees?	
8	A. Yes.	
9	Q. Who would they be?	
10	A. Joe Warrenson.	
11	Q. Position?	
12	A. Manager of Lynx.. He is manager of LCDMs, so 13 I would say western Lynx manager. That's good enough.	
14	Q. Anybody else come to mind that Ms. Cook would 15 have supervised while she was in that position?	
16	A. Craig Wilson.	
17	Q. What was his title?	
18	A. Western groups manager.	
19	Q. Anyone else?	
20	A. David McKeehan.	
21	Q. What was his position?	
22	A. Western key account manager.	
		21
1	Q. How many more people do you think we will 2 have to go through?	
3	A. None.	
4	Q. Because I do have a document that I think 5 would be helpful. These are some diagrams that you 6 produced.	
7	(Marked Deposition Exhibit Peterson 001.)	
8	Q. Take a moment to review that document and 9 familiarize yourself with it before I ask you some 10 questions about it.	
11	The court reporter has marked as Exhibit	
12	Peterson 001 document Bates No. 001487941 to 7960.	
13	Would you please identify this document for 14 the record, Ms. Peterson?	
15	A. This is an organizational chart from, it 16 looks like it says "December 30th, 2002." One of the 17 pages actually has January 2nd, 2003.	
18	Q. Was this a document that was produced from 19 your files?	
20	A. Yes, it is.	
21	Q. And is this a document that you had 22 maintained in the ordinary course of your business	

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<p>1 responsibilities for OTN?      2 A. Explain that.      3 Q. Is this a document that you maintained in      4 your files as part of your responsibilities of working      5 for OTN?      6 A. It was not a responsibility. It was just      7 simply a document in my file.      8 Q. It was in your files in connection with your      9 employment with OTN. Correct?      10 A. Correct.      11 Q. I will ask that question on every document.      12 A. Okay. So I will get used to it.      13 Q. So thanks for asking clarifying questions.      14 Let's look at the page titled Sales, which I      15 suppose is more relevant to your responsibilities,      16 which the bottom number here is 7956. I will usually      17 refer in shorthand to the last four numbers. This is      18 a chart of a sales organization. Correct?      19 A. This is one page of it.      20 Q. Is this accurate today, or has it changed?      21 A. It has changed.      22 Q. Why don't you tell us how it has changed in</p>	<p>22</p> <p>1 Q. Where is Mr. Pollock, if you know?      2 A. He went to work for another company, and I      3 cannot remember the name.      4 Q. Let's turn to the next page. This has now      5 changed a bit, so why don't you describe for us how it      6 has changed.      7 A. How it has changed would be that the two top      8 positions were one is east and one is west, is now as      9 one, where Donald Gaddy, he would be the top, and      10 instead of regional sales director he is the VP of      11 sales. And Gena Cook's position would be X'd out.      12 It's not on there.      13 Q. So would all these positions that are      14 depicted below Ms. Cook's box and Mr. Gaddy's box now      15 be responsible to Mr. Gaddy?      16 A. Let me look through them a minute. Yes.      17 Q. Do you supervise regional business      18 development managers?      19 A. Yes, I do.      20 Q. Are these names —      21 A. — changed?      22 Q. Yes, changed. Why don't you describe?</p>
<p>1 each position?      2 A. Michael Pollock is no longer VP of sales and      3 marketing.      4 Would you like me to say who has replaced?      5 Q. Yes, that would be great.      6 A. There is the VP of sales is Gena, so it's      7 divided into two positions, so Gena is VP of      8 marketing, I'm sorry, and then VP of sales is Donald      9 Gaddy.      10 Mitch Stewart is still director of inside      11 sales, but not of the eastern region. He is of both      12 east and west, so he is just across the eastern      13 region.      14 Q. Who does he report to?      15 A. To Donald Gaddy.      16 Q. Okay.      17 A. Louis Chinn is no longer director of inside      18 sales. He is director of customer support. Actually      19 that's still correct. The sales manager of operations      20 is still an open position. Jan Woods is still there.      21 There is an open position in sales for a specialist,      22 and Joanna Kalvo is still there.</p>	<p>23</p> <p>1 A. Yes.      2 Q. Why don't you describe that for us, please.      3 A. Cary Harris is now Liz Rosenberg.      4 Q. Where is Mr. Harris?      5 A. He went to work for Bristol-Myers Squibb.      6 Q. Okay.      7 A. Todd Little is still there. Mike Brushbold      8 is still there. Craig Wilson is now in the position      9 of Jim Smith, which is up at the top there, the top      10 left. In his place is a gentleman whose name is John      11 Barrientes.      12 Tess Caterinichio is gone and in her place is      13 Doug Storer, S-T-O-R-E-R, and Julie Trueblood is still      14 there.      15 Q. Where is Tess?      16 A. I actually don't know. She went to work for      17 another company, and I think she may have changed      18 again. I'm not sure.      19 Q. I noticed earlier in the prior page the      20 phrase "inside sales." Is there a distinction between      21 inside sales and outside sales at OTN?      22 A. Yes.</p>

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## 8 (Pages 26 to 29)

<p style="text-align: right;">26</p> <p>1 Q. What is that distinction?      2 A. Inside sales, there is a group of 12 account      3 representatives called ARs, and they are on the phone      4 predominantly. Then they mirror, or have like      5 territories to the outside sales which are the TBDMs      6 or the territory business development managers.      7 Q. Territory what?      8 A. You can call them TBDM. It's easier.      9 Q. Do TBDMs, are they supervised by the RBDMs?      10 A. They are supervised by the manager – the R      11 here on this one, you see RR.      12 MR. TRETTER: Let me interrupt you. You are      13 referring to the page ending with number 7957. The      14 RBDM on each of those, the title has been changed to      15 TBDM.      16 (Discussion off the record.)      17 Q. We were discussing the TBDMs. So right now      18 we have six TBDMs reporting to you, correct?      19 A. Correct.      20 Q. What do they do? What is the responsibility      21 of TBDMs?      22 A. They call on – physically call on the</p>	<p style="text-align: right;">28</p> <p>1 A. No.      2 Q. Let's stick with the exhibit in front of us.      3 Your counterpart in the eastern region, who is that      4 again?      5 A. Ralph Maesseli, who takes the place of Steve      6 Brennan on the chart on page 957.      7 Q. How many TBDMs does Mr. Maesseli now      8 supervise?      9 A. He has six territories.      10 Q. Are you familiar with the names of the people      11 that are presently occupying the TBDM positions under      12 Mr. Maesseli?      13 A. I can attempt.      14 Q. Why don't you go through the chart and make      15 corrections where you know there have been changes?      16 A. The very first one, the name is Bill Winn,      17 W-I-N-N. The second one still remains, Steve Testa.      18 The third one is open. The fourth one is – I can't      19 remember his name. It's a new position, so it's just      20 been filled.      21 Q. Is Mr. Close no longer in that position?      22 A. He is no longer in that position. He is</p>
<p style="text-align: right;">27</p> <p>1 accounts, the OTN accounts in the field to insure that      2 they help to develop the business of the office based      3 oncology practice, help them to get pricing for all      4 the different drugs that we distribute, and position      5 the different services that OTN provides..      6 Q. Would a particular customer of OTN have more      7 than one TBDM assigned to them?      8 A. No.      9 Q. What is the territorial scope of the TBDMs?      10 A. They have, depending, anywhere from one to      11 seven states.      12 Q. So you have five TBDMs covering the entire      13 region that you are responsible for?      14 A. Six.      15 Q. What types of background and training do      16 TBDMs have, generally?      17 A. They have a minimum of three years sales      18 experience, up to 20.      19 Q. Are they referred to as outside sales?      20 A. Correct.      21 Q. Do you supervise anyone other than the six      22 TBDMs?</p>	<p style="text-align: right;">29</p> <p>1 still with the company. His new title is key account      2 manager.      3 Q. Territory five?      4 A. That is open.      5 Q. And territory six?      6 A. That is open.      7 Q. I'm going back up to territory one. Where is      8 Ms. Kirkner presently?      9 A. She went to work for another company. I'm      10 not sure where she is.      11 Q. Ms. Larkin?      12 A. She went to work for another company.      13 Q. Mr. or Ms. Boyd?      14 A. Went to work for another company.      15 Q. Is that a man or a woman?      16 A. A man.      17 Q. And Mr. Pletz?      18 A. He passed away in December.      19 Q. I bet your glad you're not manager of the      20 east right now.      21 A. Yes, I am.      22 Q. This diagram that we have right here, we have</p>

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9 (Pages 30 to 33)

<p>1 Mr. Chip Carter, manager of application – 2 A. – specialists. 3 Q. What does that job entail? 4 A. Chip Carter, the title has changed. He is 5 the eastern Lynx manager. Currently there is not a 6 western Lynx manager, so he is doing both. That's an 7 interim position. He is responsible for managing – 8 he has actually six LCDMs, so that title there is 9 LCDM, which stands for Lynx customer development 10 manager. 11 Q. What do his responsibilities entail? 12 A. He coaches and develops those territory 13 business managers and manages their activities within 14 Lynx accounts. 15 Q. Are there people that are responsible for 16 selling the Lynx system? 17 A. No, they are the technical support. They do 18 the installation of the Lynx station and the training 19 and the support. 20 Q. The territory business managers – TBDMs – 21 are they responsible for selling drugs? Correct? 22 A. Correct.</p>	<p>30</p> <p>1 vice president of government affairs with OTN. He is 2 a leading expert in the field of office based oncology 3 in keeping abreast of the different changes to the 4 legislation, Medicare reform, and all of that, so he 5 gives talks, gives workshops and such. 6 Q. I've seen his name on some documents. Any 7 outside consultants? 8 A. A company called KRJ. 9 Q. What do they do? 10 A. They are a billing consulting firm. They 11 actually do billing for office based oncology, and 12 they consult practices. 13 Q. When you say "billing," what do you mean? 14 A. It would be billing to the payers or Medicare 15 or whomever, so they would actually process the 16 various claims for a practice. 17 Q. Using computerized services? 18 A. Yes, and they are just one of many in the 19 country, but they are one that we – 20 Q. Does OTN have a financial relationship with 21 KRJ? 22 A. No.</p>
<p>1 Q. And what else? 2 A. And services, and the Lynx machine. 3 Q. What services does OTN sell? 4 A. The services, okay, we have the Lynx machine, 5 but then the services would be things that help people 6 in their business, being able to position, what type 7 of payment terms someone might be on. We might have 8 different methods and they need to be able to describe 9 them to them and help them to choose what they need, 10 like on line banking or direct debit or something like 11 that, so they will go through that. 12 They will talk about the different services 13 that would help a practice conduct business. We have 14 consultants and people that we might refer to them if 15 they need help in certain areas like legislative 16 updates, knowing what is going on with Medicare and 17 that. So it's just mostly guiding them in the right 18 direction. 19 Q. Can you give examples of consultants that 20 your salespeople might refer clients to? 21 A. One of them is actually an employee of OTN. 22 His name is John Akscin, A-K-S-C-I-N, and he is the</p>	<p>31</p> <p>1 Q. Do any other consultants come to mind? 2 A. No. 3 Q. I've seen Documentics before. What is that? 4 A. I do not believe Documentics exists anymore. 5 Q. Was it formerly a consulting outfit that OTN 6 referred customers to? 7 A. Yes, it was another one like KRJ that was out 8 there. 9 Q. We will come back to the Lynx machine later, 10 but a brief question on that: Does Lynx provide 11 billing software? I'm sorry, does OTN provide billing 12 software to its customer, similar to what KRJ does? 13 A. No. 14 Q. Where is Mr. Pollock now? 15 A. I don't remember where he went. He went to 16 work for another company, and I can't remember the 17 name of it. 18 Q. Let's turn the page to Bates numbers ending 19 7958. I'm going to guess this has changed 20 significantly. 21 A. Yes. 22 Q. In fact, it has probably changed so much it's</p>

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<p>1 not even worth going through?</p> <p>2 A. Yes.</p> <p>3 Q. Based on your prior testimony. Right?</p> <p>4 A. Yes.</p> <p>5 Q. Turn two pages forward, please, to the page</p> <p>6 Bates numbers ending 7960. It says "strategic</p> <p>7 development." Are you familiar with this</p> <p>8 organizational tree at all?</p> <p>9 A. Yes.</p> <p>10 Q. First of all, are these the same people that</p> <p>11 are in these positions today?</p> <p>12 A. This does not exist.</p> <p>13 Q. What did the strategic development — do we</p> <p>14 call it a unit or area?</p> <p>15 A. I don't know where it went, actually. It's</p> <p>16 not in existence anymore.</p> <p>17 Q. What did it do? Do you know what it did?</p> <p>18 A. No. I'm looking at this. I mean I know what</p> <p>19 the different roles did under it, but I don't know</p> <p>20 what the meaning of strategic development in this</p> <p>21 context is.</p> <p>22 Q. We have already discussed Mr. Akscin. Why</p>	<p>34</p> <p>1 Q. And that includes drugs, correct?</p> <p>2 A. Correct, drugs and supplies, everything that</p> <p>3 we have in our catalog.</p> <p>4 Q. Where are the warehouses located?</p> <p>5 A. In Memphis.</p> <p>6 Q. Just one?</p> <p>7 A. Yes.</p> <p>8 Andy Reynold is no longer with the company,</p> <p>9 and I do not know where he went. Susan Justil works</p> <p>10 for Mike Proctor, and I think she has a similar</p> <p>11 position. There are no other people on the page.</p> <p>12 Q. She is with McKesson. Is that correct?</p> <p>13 A. I actually don't know what her title is.</p> <p>14 Q. Let's go back to the beginning of this</p> <p>15 document. The page that begins with Bates No. 7942</p> <p>16 purports to discuss executive committee. Does OTN</p> <p>17 have an executive committee today?</p> <p>18 A. Yes.</p> <p>19 Q. Who are its members, if you know?</p> <p>20 A. The president is John Amos.</p> <p>21 Q. Is that A-M-O-S?</p> <p>22 A. Correct.</p>
<p>1 don't you tell me, of the positions that you see on</p> <p>2 this chart, the ones that you are familiar with and</p> <p>3 what they did.</p> <p>4 A. Okay. Steve Binder is still with the</p> <p>5 company, and he works for the part of the company that</p> <p>6 does all of the shipping of our product, and I'm not</p> <p>7 sure what the department is called.</p> <p>8 John Akscin is now the vice president of</p> <p>9 government affairs, so his title has changed.</p> <p>10 Steve Binder, I correct myself, Steve Binder</p> <p>11 is no longer with OTN. I was thinking of somebody</p> <p>12 else. He is no longer with OTN. I apologize.</p> <p>13 Q. Okay.</p> <p>14 A. Mike Proctor is the gentleman that is</p> <p>15 involved in the shipping of product. He is in that</p> <p>16 area.</p> <p>17 Q. When you refer to "shipping of product," what</p> <p>18 are you referring to?</p> <p>19 A. We are a distribution company, and when a</p> <p>20 customer orders product we ship, pick, pack and ship</p> <p>21 that product to that facility, so that's what he does,</p> <p>22 he oversees that.</p>	<p>35</p> <p>1 This is a quiz too. Teri Case is still his</p> <p>2 executive assistant. T-E-R-I-C-A-S-E is his</p> <p>3 executive associate.</p> <p>4 The VP of business development, to the best</p> <p>5 of my knowledge, is still an open position, so at the</p> <p>6 left where Mike Cunningham is, that is no longer Mike</p> <p>7 Cunningham, that is an open position.</p> <p>8 Q. Do you know where Mike Cunningham is?</p> <p>9 A. He went to a company called National Oncology</p> <p>10 Alliance.</p> <p>11 Q. Okay.</p> <p>12 A. Kathy MacDonald is no longer there.</p> <p>13 Our new CFO is — I'm blanking, I can see his</p> <p>14 face. I will come back to it when I remember.</p> <p>15 Q. Do you know where Ms. MacDonald is?</p> <p>16 A. I believe she works for BMS.</p> <p>17 The CIO is open. I don't believe there is</p> <p>18 anyone in that position.</p> <p>19 The director of HR is Paul Larson. The VP of</p> <p>20 sales is Donald Gaddy. The VP of marketing is Gena,</p> <p>21 and there is no VP of strategic development.</p> <p>22 Q. The modifications that you just described,</p>

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<p>1 with those modifications do you believe that this  2 executive committee tree is accurate? Let me strike  3 that question.</p> <p>4 MR. TRETTER: She has basically changed  5 everybody.</p> <p>6 Q. Based on the information that you gave me,  7 the change in the names, do you believe that the  8 reporting relationships are still the same? For  9 instance —</p> <p>10 A. Yes, they all report to John Amos.</p> <p>11 Q. Thank you.</p> <p>12 You have never been a member of the executive  13 committee. Correct?</p> <p>14 A. No, I have not.</p> <p>15 Q. Do you know whether they have regular  16 meetings?</p> <p>17 A. I believe so.</p> <p>18 Q. Do you know whether minutes are kept of those  19 meetings?</p> <p>20 A. I have no idea.</p> <p>21 Q. Do you think that perhaps Ms. Cook will be a  22 better person for me to direct those questions to?</p>	38	<p>3 A. I know different people within these titles,  2 and I do speak with them, but they are in different  3 positions, and I don't believe it has that title  4 anymore.</p> <p>5 Q. When you do contact the people that you know  6 on this page, for what purposes would you be  7 contacting them?</p> <p>8 A. Their support. They kind of fall under that  9 IT heading. Most of them are programmers or project  10 leaders or project developers.</p> <p>11 Q. When you do speak to them, what do you speak  12 to them about? Just the general subject matter.</p> <p>13 A. Just support. It's more for programs that I  14 use within the company, so computer programs and  15 software that I'm using in my system that I need some  16 technical help on, or would like to have enhancement  17 on.</p> <p>18 Q. What kind of OTN software do you utilize in  19 your job?</p> <p>20 A. There are different types. Some of it is  21 just simply where we have one system that is a  22 database, you know, just a general database of all of</p>	40
<p>1 A. Yes.</p> <p>2 Q. Several pages in there is a chart titled  3 Information Technology Organization, Bates numbers  4 ending 7949. Does this organization still exist?</p> <p>5 A. Yes, it does.</p> <p>6 Q. Do you understand their purpose within OTN?</p> <p>7 A. Yes.</p> <p>8 Q. What is your understanding?</p> <p>9 A. That's the IT department, information  10 technology, and they support the different programs  11 and projects that are technology based within our  12 company.</p> <p>13 Q. Would that include Lynx?</p> <p>14 A. Actually I don't know the answer to that.</p> <p>15 There have been quite a few changes, so I don't know.</p> <p>16 Q. The next page ending 7950 is titled Systems  17 Applications. Are you familiar with this group at  18 all?</p> <p>19 A. This is an old group. I don't believe it  20 exists today with that same name, or with the same  21 people.</p> <p>22 Q. You have no reason to interface with them?</p>	39	<p>1 our customers. We have another system that is all of  2 our — where we put our site notes and we put service  3 issues, so it's called issue tracking, so any kind of  4 customer issues that there are tracked within that  5 software.</p> <p>6 Q. Do you know what kind of software that is?</p> <p>7 A. By name?</p> <p>8 Q. Yes. Is that an off-the-shelf product?</p> <p>9 A. No, I don't believe so. It wouldn't be a  10 name — it's an internal software product of some  11 sort.</p> <p>12 Q. What do you call it?</p> <p>13 A. Our new system, we call it CIA.</p> <p>14 Q. Is that an acronym for something else?</p> <p>15 A. It is an acronym for something, and I have no  16 idea what it is for.</p> <p>17 Q. The general database that you referenced  18 earlier, does that have a specific name?</p> <p>19 A. No. It just works behind the scenes.</p> <p>20 Q. You have described two systems. Are there  21 any others that you utilize internally?</p> <p>22 A. There is another that we called INICE,</p>	41

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12 (Pages 42 to 45)

<p>1 I-N-I-C-E. That's probably what I would call the      2 database. That's probably the name of the database.      3 There are a lot of databases within our company. Like      4 any company, it kind of all rolls up into that name.      5 That's what I see.</p> <p>6 Q. So it's a database of customers that you      7 referenced earlier would be under INICE umbrella?</p> <p>8 A. That's where I go to find the database      9 information. I don't know the name of the software      10 behind it.</p> <p>11 Q. What other types of information is available      12 through INICE?</p> <p>13 A. Customer data information. It would be what      14 a particular customer's pricing is, any kind of      15 information that we would need to track on a customer      16 for purchasing drugs or shipping drugs. It's all      17 database information.</p> <p>18 Q. Address of the customer?</p> <p>19 A. Address, what the payment term is they are      20 on, what different groups they belong to. It's all      21 database.</p> <p>22 Q. And group purchasing organizations?</p>	<p>42</p> <p>1 Q. These three different databases that you have      2 named, do you access them through a personal computer      3 at your office?</p> <p>4 A. Yes, I do.</p> <p>5 Q. And you utilize the internet?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have a home office, or a separate      8 office?</p> <p>9 A. I have a home office.</p> <p>10 Q. I think that's all the questions that I have      11 for that document.</p> <p>12 (Marked Deposition Exhibit Peterson 002.)</p> <p>13 Q. Take a moment to review this document,      14 please, and when you have had a chance to, would you      15 let me know and I will ask you some specific      16 questions.</p> <p>17 Let's start with a document that is the      18 territory map, a region map, I should say, and its      19 ending with Bates numbers 3105. First let me ask you,      20 for the record, Exhibit Peterson 002 are documents      21 Bates numbered BMS/AWP 001483100 to 121.</p> <p>22 Could you please identify this document for</p>
<p>1 A. Group purchasing organizations, correct,      2 names, titles, addresses, account number information.</p> <p>3 Q. Any other databases that you access?</p> <p>4 A. We have one called Metreo, and that is our      5 pricing software. When I say "pricing," that is we      6 are a distribution company so we have to have prices      7 for customers for when they bid the drugs, so that's      8 how we set it up.</p> <p>9 Q. So customers can access Metreo as well?</p> <p>10 A. No, they cannot. That is our internal      11 system.</p> <p>12 Q. Who is responsible for maintaining Metreo?</p> <p>13 A. The IT department.</p> <p>14 Q. So if OTN changes the price on a particular      15 drug it would be done through Metreo?</p> <p>16 A. Metreo is how the sales force does it. There      17 is, again, software systems that support that, so that      18 would be the front end for us, that's where we would      19 go in to do it. Yes.</p> <p>20 Q. Any other databases that you utilize?</p> <p>21 A. I'm thinking. That's it, that I can think      22 of.</p>	<p>43</p> <p>1 the record, Ms. Peterson?</p> <p>2 A. This document is a PowerPoint presentation      3 given at the Bristol-Myers Squibb meeting that was in      4 Seattle.</p> <p>5 Q. Was this document maintained in your files?</p> <p>6 A. Yes, it was.</p> <p>7 Q. Did you produce this document out of your      8 files?</p> <p>9 A. Yes, I did.</p> <p>10 Q. Were you at this meeting?</p> <p>11 A. Yes, I was.</p> <p>12 Q. Do you know when in 2003 it occurred?</p> <p>13 A. No. It doesn't say.</p> <p>14 MR. TRETTER: Does the cover email help at      15 all?</p> <p>16 THE WITNESS: No, that's from February. I      17 would assume it was after February. It was probably      18 in the beginning of the year sometime.</p> <p>19 Q. Let's go back to the region map then on page      20 83105. Does this map accurately reflect the regions      21 as they stand today?</p> <p>22 A. No.</p>

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13 (Pages 46 to 49)

<p>1     Q. Nothing is easy.</p> <p>2     A. No.</p> <p>3     Q. Let's start with the states. Have the states</p> <p>4     changed?</p> <p>5     A. Yes.</p> <p>6     Q. What has changed?</p> <p>7     A. It's actually fairly easy. Kentucky is with</p> <p>8     the east, and that's it.</p> <p>9     Q. Let's look at the personnel in the western</p> <p>10   region. What, if anything, has changed in this</p> <p>11   personnel alignment?</p> <p>12   A. Gena is now the VP of marketing. I'm still</p> <p>13   in that position. Jim Smith is no longer with the</p> <p>14   company, and that is Craig Wilson now. His title</p> <p>15   isn't KAM, its groups manager.</p> <p>16   The next position is open, and Joe is now on</p> <p>17   a temporary assignment within OTN. Louis Chinn is no</p> <p>18   longer the inside sales director, its Mitch Stewart,</p> <p>19   S-T-E-W-A-R-T. We no longer have this position, the</p> <p>20   AAR.</p> <p>21   Q. The group manager, Mr. Wilson, what is his</p> <p>22   responsibilities?</p>	<p>46</p> <p>1     A. Kind of.</p> <p>2       Let's see, Chip Carter is still in that</p> <p>3   position. Mitch Stewart is in that position, but he</p> <p>4   is not just the east, it's east and west. The AAR</p> <p>5   position does not exist.</p> <p>6     Q. I will not make you do this again for the</p> <p>7   prior page. I think we have already discussed it.</p> <p>8     A. What page number?</p> <p>9     Q. 83104.</p> <p>10   A. Okay.</p> <p>11   Q. I think that's all the questions that I have</p> <p>12   on that one for now.</p> <p>13       (Marked Deposition Exhibit Peterson 003.)</p> <p>14   Q. For the record, the document marked as</p> <p>15   Exhibit Peterson 003 is Bates numbered BMS/AWP</p> <p>16   001487916. Do you recognize this document?</p> <p>17   A. Yes.</p> <p>18   Q. Can you please identify it for us?</p> <p>19   A. It doesn't have a date on it, so I don't know</p> <p>20   when it is from, actually, but it is an explanation of</p> <p>21   the rules and responsibilities of the regional</p> <p>22   business development manager application specialist,</p>
<p>47</p> <p>1     A. The group manager is responsible for state</p> <p>2   societies that OTN has won the bid award, and he</p> <p>3   manages those state societies and works with the</p> <p>4   board.</p> <p>5     Q. What is an example of the largest state</p> <p>6   society that you work with?</p> <p>7     A. SOAP, Southern Oncology Alliance of</p> <p>8   Practices, I believe is what it stands for.</p> <p>9     Q. Where is that headquartered?</p> <p>10   A. I don't think there is an actual headquarters</p> <p>11   of it. There are board members. It represents the</p> <p>12   southern states.</p> <p>13   Q. That's a GPO, correct?</p> <p>14   A. It's a GPO – GPO/state society. That's</p> <p>15   correct.</p> <p>16   Q. Let's go to the eastern region and briefly</p> <p>17   run through this. Mr. Gaddy is –</p> <p>18   A. – VP of sales now.</p> <p>19   Q. VP of sales.</p> <p>20   A. Steve Brennan is key account manager, and in</p> <p>21   his place is Ralph Maesseli.</p> <p>22   Q. Did they switch positions?</p>	<p>49</p> <p>1   account representative, and Lynx customer service</p> <p>2   representative.</p> <p>3     Q. Is this a document that you prepared?</p> <p>4     A. Yes – well, I didn't actually do it, I</p> <p>5   didn't prepare it. I did write it.</p> <p>6     Q. That's what I was actually asking.</p> <p>7       Is this a document that was maintained in</p> <p>8   your files as an OTN employee?</p> <p>9     A. Yes.</p> <p>10   Q. Did you produce this out of your files?</p> <p>11   A. Yes.</p> <p>12   Q. If you didn't prepare it, do you know who</p> <p>13   did?</p> <p>14   A. No.</p> <p>15   Q. Does it accurately reflect your</p> <p>16   responsibilities when you were a regional business</p> <p>17   development manager?</p> <p>18   A. Yes.</p> <p>19   Q. RBDM.</p> <p>20   A. Yes.</p> <p>21   Q. Just so I have this in mind, you were a RBDM</p> <p>22   for two years?</p>

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## 14 (Pages 50 to 53)

<p>1 A. Correct.</p> <p>2 Q. What time period?</p> <p>3 A. When I started with the company, which was in</p> <p>4 September of 1999 until late 2000/beginning of 2001,</p> <p>5 so maybe a little over a year, a year and a half.</p> <p>6 Q. The first bullet item under RBDM is</p> <p>7 "Responsible for driving profitable revenue in</p> <p>8 territory accounts."</p> <p>9 Can you give a more detailed description of</p> <p>10 what that entails, please?</p> <p>11 A. Yes. When we are talking about profitable</p> <p>12 revenue we are talking about OTN's profitable revenue,</p> <p>13 so we would look at a territory account individually</p> <p>14 to make sure it was profitable for OTN to do business</p> <p>15 with that particular account, and then it would also</p> <p>16 be the responsibility to look and make sure that the</p> <p>17 overall profitability of the territory remained</p> <p>18 intact, so in other words making good business</p> <p>19 decisions when selling to customers.</p> <p>20 Q. And you are trying to get the customers to</p> <p>21 sign up with OTN as their distributor, correct?</p> <p>22 A. The word "sign up"?</p>	<p>50</p> <p>1 A. It's the data that is entered into the Lynx,</p> <p>2 so its demographic information and utilization</p> <p>3 information, so that is taken through the phone lines</p> <p>4 into a central database where it is collected as</p> <p>5 aggregated data, and that data can then be turned</p> <p>6 around as information, be sold on behalf of the</p> <p>7 customer base, so that's — well, I don't know —</p> <p>8 MR. TRETTER: In compliance with HIPAA.</p> <p>9 THE WITNESS: Our contract is very, very</p> <p>10 strong, very HIPAA compliant. There it is completely</p> <p>11 devoid of patient identification.</p> <p>12 Q. Bullet point number 2, "Responsible for</p> <p>13 creating A business plan to drive profitable revenue</p> <p>14 and drive OTN differentiation."</p> <p>15 What does OTN differentiation mean?</p> <p>16 A. That is how we state — in the industry you</p> <p>17 want to make sure you differentiate yourself from the</p> <p>18 competition, so that is what that is, what are the</p> <p>19 different things that we, as company, or as a</p> <p>20 representative would do that would make them want to</p> <p>21 buy from us versus our competition.</p> <p>22 Q. How do you see OTN differentiate itself from</p>
<p>1 Q. What is it that you want a customer to do?</p> <p>2 A. We would like them to purchase their products</p> <p>3 through OTN.</p> <p>4 Q. And you would hope that they would purchase</p> <p>5 as many products as they can, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And use OTN systems like Lynx as well?</p> <p>8 A. Yes.</p> <p>9 Q. Do you charge for Lynx? Does OTN charge</p> <p>10 customers for Lynx?</p> <p>11 A. There is a contract for Lynx, and it is up to</p> <p>12 the customer within the contract how they want to do</p> <p>13 it. If there is a charge for the system, and then</p> <p>14 within the contract it states if they share</p> <p>15 information within the system, a fair market exchange</p> <p>16 of data, that they can get the system at no charge, so</p> <p>17 it's a fair exchange of information for that \$80, so</p> <p>18 we have some that purchase it and some that don't.</p> <p>19 Q. This would be utilization data?</p> <p>20 A. Yes.</p> <p>21 Q. Data that OTN would want to use for purposes</p> <p>22 of marketing analysis?</p>	<p>51</p> <p>1 it's competition in that respect?</p> <p>2 A. I would say that the majority of the</p> <p>3 differentiation comes from the different services that</p> <p>4 we provide, whether it is with our Lynx system</p> <p>5 services, we do a lot of training and education, a lot</p> <p>6 of support of our customers. Our representatives are</p> <p>7 there. We listen to what is going on with the</p> <p>8 practice and help identify the needs of the practice</p> <p>9 and fulfill those requests. So a lot of it is</p> <p>10 personnel issues. It has to do with people. People</p> <p>11 buy from people.</p> <p>12 Q. Did you create a business plan when you were</p> <p>13 an RBDM?</p> <p>14 A. Yes, I did.</p> <p>15 Q. How often would you do that?</p> <p>16 A. Annually.</p> <p>17 Q. Who would you report to?</p> <p>18 A. My boss.</p> <p>19 Q. The sales manager?</p> <p>20 A. The director of sales.</p> <p>21 Q. The third bullet, "Responsible for selling</p> <p>22 the Lynx system," — go ahead and read it.</p>

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<p>1     A. "Responsible for selling the Lynx system 2 where it benefits a customer and OTN is the only team 3 member to receive a signed contract. Must have a 4 thorough understanding of the benefits of the Lynx 5 system and the machine components."</p> <p>6     Q. What does "the only member to receive a 7 signed contract" mean?</p> <p>8     A. What that means is the original business 9 development manager is the team lead, and when it 10 comes time to work with customers to identify whether 11 they are an appropriate fit to receive the Lynx 12 machine and somebody that would be a good fit for it, 13 they are the one that actually gets the contract, 14 takes it to the customer, gets them to sign it and 15 brings it back to OTN.</p> <p>16    Q. Read the fourth bullet.</p> <p>17    A. "Responsible for territory business 18 analysis. Can analyze data to understand territory 19 business opportunities."</p> <p>20    Q. What does "territory business analysis" mean?</p> <p>21    A. What that means is we have — from our 22 database we get spreadsheet reports that show within a</p>	<p>54</p> <p>1     they can pay, and depending on when they pay, it 2 depends on how much their actual price is. 3         So for instance, if somebody pays in 30 days 4 they may have a 1 percent discount on their pricing. 5 So that is helping them to understand what the actual 6 price they pay is.</p> <p>7         Does that help?</p> <p>8     Q. It sure does.</p> <p>9         Comparative competitive pricing offers, what 10 does that refer to?</p> <p>11    A. When we are either going after incremental 12 new business or trying to maintain existing business, 13 competitors come in and give offers to accounts or we 14 are the one that is coming in and we want to gain new 15 business. The representative needs to understand the 16 pricing offered by the competition so that they can 17 position that with the customer, again understanding 18 what has been offered and helping them to understand 19 the dead net pricing, again, to make sure it's an 20 apples to apples comparison.</p> <p>21    Q. Who are OTN's competitors?</p> <p>22    A. Oncology Supply, Florida Infusion, Cardinal,</p>
<p>55</p> <p>1     territory all of the customers that would be in a 2 particular territory, how much they currently buy from 3 OTN, and then identify what their potential is. So we 4 are looking for business opportunities within a 5 territory. You are looking for ways to grow your 6 business. It's just analysis of numbers and territory 7 statistics.</p> <p>8         MR. TRETTER: Can I interrupt? Is anybody on 9 the phone?</p> <p>10      (Discussion off the record.)</p> <p>11    Q. Could you please read bullet number 5?</p> <p>12    A. "Strong understanding of pricing and 13 comparative competitive pricing offers. Can push back 14 with the customers to have them understand dead net 15 pricing."</p> <p>16    Q. What does that mean, that latter part?</p> <p>17    A. What that means is that when you work with a 18 particular customer they will get a price list from 19 us, so they will get a price, and then they also have 20 terms. So what "terms" mean is when do you pay your 21 bill, so they can pay it right away, pay it in 30 22 days, in 45 days. We have different terms to which</p>	<p>57</p> <p>1     U.S. Oncology. Some of the players have changed, 2 that's why I'm thinking. Those are the main ones.</p> <p>3     Q. And they are distributors of drugs?</p> <p>4     A. Yes, they are specialty oncology 5 distributors.</p> <p>6         Cardinal is actually a lot larger than that. 7 They used to have a specialty oncology division, and 8 they have rolled it up and called it Cardinal now.</p> <p>9     Q. It used to be NSS?</p> <p>10    A. Yes, NSS.</p> <p>11    Q. Please read bullet number 6.</p> <p>12    A. "Must be able to sell value versus price. 13 Must be able to sell the value of OTN and all 14 services. Must be able to sell competitively."</p> <p>15    Q. Could you describe in particular what it 16 means to sell value versus price?</p> <p>17    A. What that means is one of the things I really 18 emphasize with them is, again, people buy from people, 19 and that on a sales call we don't want them to spend 20 the majority of their time talking about drug 21 pricing. We would prefer them spending more time 22 talking about customer needs and services that we</p>

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<p>1 might have, and things like that instead of always      2 talking about pricing. So selling the value. If you      3 identify a need, then you give the person some type of      4 value back.</p> <p>5 Q. Be useful, in other words? Correct?</p> <p>6 A. Correct.</p> <p>7 Q. Bullet number 7, why don't you read that?</p> <p>8 A. "Responsible for excellent teamwork with      9 territory team with excellent follow up on all      10 requests and agreed upon action items."</p> <p>11 Q. I don't have any further questions on that      12 bullet.</p> <p>13 The other position that is described here,      14 one of them is application specialist. Are you      15 familiar with that position?</p> <p>16 A. Yes.</p> <p>17 Q. Who is in that position now in your region?</p> <p>18 A. That is actually no longer called an      19 application specialist, that's an LCDM.</p> <p>20 Q. Who is that, again?</p> <p>21 A. There are 12 LCDMs that actually mirror the      22 territory business development – the TBDM.</p>	58	<p>1 representative/customer service representative, is      2 that position still in effect at OTN?</p> <p>3 A. Actually it's divided out. There are several      4 different ones now. There is a customer service      5 representative that still exists, and there is a Lynx      6 customer service rep that still exists, but this one      7 implies that it's the same position, and now they are      8 separated out.</p> <p>9 Q. What are the responsibilities, to your      10 knowledge, of the Lynx customer service representative      11 now?</p> <p>12 A. They actually take inbound technical calls      13 from our Lynx customers with technical questions      14 regarding either the operation or management of the      15 Lynx machine, so they are the technical support      16 people, and they also make outbound calls if there is      17 any service upgrades or any kind of information that      18 they need to pass on to their customers. They do have      19 a mirrored territory to the TBDM and AR. There are 12      20 of them.</p> <p>21 Q. The same question for customer service      22 representative. What are the customer service</p>	60
<p>1 Q. There are six in each region?</p> <p>2 A. Correct, six in each region, so 12 total      3 LCDMs.</p> <p>4 Q. Let me back up. The description of the      5 responsibilities for the RBDMs, are these      6 responsibilities now the same for the TBDMs?</p> <p>7 A. Correct.</p> <p>8 Q. The same question for the bullet point under      9 application specialist. To your knowledge are these      10 responsibilities still the responsibilities of the      11 LCDMs?</p> <p>12 A. Yes.</p> <p>13 Q. The account representative position that is      14 referenced here, that no longer exists, correct?</p> <p>15 A. No, that does exist. That would be the      16 inside salesperson, but they are called account      17 representatives still.</p> <p>18 Q. Are these responsibilities, to the best of      19 your knowledge, still the responsibilities of the      20 account representative?</p> <p>21 A. Yes.</p> <p>22 Q. And then the Lynx customer service</p>	59	<p>1 representative responsibilities?</p> <p>2 A. Bullet number 1 and bullet number 3 under the      3 Lynx customer service rep.</p> <p>4 Q. Are there 12 of them?</p> <p>5 A. There are 12 of them.</p> <p>6 Q. Does a customer of OTN have assigned to it a      7 TBDM?</p> <p>8 A. Yes.</p> <p>9 Q. An LCDM?</p> <p>10 A. Yes.</p> <p>11 Q. An account representative?</p> <p>12 A. Yes.</p> <p>13 Q. A Lynx customer service representative?</p> <p>14 A. Yes.</p> <p>15 Q. And a customer service representative?</p> <p>16 A. Yes.</p> <p>17 Q. So there would be five OTN front line      18 employees assigned to a customer. Is that generally      19 an accurate statement?</p> <p>20 A. Yes.</p> <p>21 Q. Anyone else?</p> <p>22 A. I believe there is also another, like a third</p>	61

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<p>1 level, I'm not sure what the title is. There is the      2 Lynx customer service rep and the customer service      3 rep. There is also like a customer service      4 specialist, so there is another person on that team      5 there, so there are like three. They are under a      6 title, kind of the heading of customer care.      7 Q. What do they do?      8 A. The customer care team is the Lynx customer      9 service rep, the customer service rep, and then there      10 is a customer service specialist, which isn't there.      11 It isn't on this document, 7917, it is not listed on      12 this document.      13 Q. Are there 12 of those?      14 A. I don't know the answer to that.      15 Q. How does the customer service specialist's      16 role differ from the customer service representative?      17 A. The specialist in the title is they actually      18 deal with specific issues and getting issues to      19 resolution. So if a customer service -- a Lynx      20 customer service rep has an issue that they can't      21 resolve immediately, then its stepped up to the      22 specialist who then will work with that particular</p>	<p>62</p> <p>1 A. Yes.      2 Q. Is there one in Oregon?      3 A. Oregon Hematology Oncology.      4 Q. Is that in Portland?      5 A. Correct.      6 Q. What are the responsibilities of a key      7 account manager?      8 A. A key account manager's responsibilities are      9 maintaining existing key accounts, and then also      10 attaining incremental key accounts.      11 Q. New ones?      12 A. Correct.      13 Q. Does the key account manager work with the      14 TBDM?      15 A. Yes.      16 Q. Are you ultimately responsible in your region      17 for all the people listed on this exhibit in addition      18 to the key account manager?      19 A. No.      20 Q. They have different reporting lines?      21 A. Yes.      22 (Recess.)</p>
<p>1 issue. It's just a higher level.      2 Q. Do the larger customers of OTN also have a      3 key account person assigned to them in addition to the      4 positions that are reflected on this document?      5 A. Yes.      6 Q. What is that position?      7 A. Key account manager.      8 Q. How do you become a key account?      9 A. How do you become a key account? We define a      10 key account as accounts that have purchasing potential      11 of 15 million a year or greater.      12 Q. Are you familiar with the key accounts in      13 your region, the names?      14 A. Most of them.      15 Q. Can you give me some examples, please?      16 A. In my region, Fox Valley.      17 Q. Is that in Wisconsin?      18 A. Yes.      19 Redwood Regional Oncology Associates.      20 Q. Is there one in the state of Washington?      21 A. Western Washington Oncology.      22 Q. Is that in Olympia?</p>	<p>63</p> <p>1 Q. Are you familiar, Ms. Peterson, with the      2 board of advisers?      3 MR. TRETTER: The advisory board?      4 Q. Yes.      5 A. Yes.      6 Q. Of their existence?      7 A. Yes.      8 Q. Is it called the advisory board or committee?      9 A. Advisory board.      10 Q. How often do they meet?      11 A. Physically? They meet annually.      12 MR. KUSHNER: Can you describe the name -- the      13 full name of the board that you are talking about.      14 Q. When you say "advisory board," what do you      15 mean?      16 A. Well, the customer advisory board. We have      17 different advisory boards.      18 Q. One is called customer advisory board?      19 A. Uh-huh.      20 MR. TRETTER: Say yes or no.      21 THE WITNESS: Yes.      22 Q. What are the other ones that you are aware</p>

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<p>1 of?</p> <p>2 A. Lynx advisory board.</p> <p>3 Q. And the other advisory board?</p> <p>4 A. That's it.</p> <p>5 Q. What is the Lynx advisory board?</p> <p>6 A. It's a group of customers that have Lynx that come together and meet with OTN to discuss Lynx issues. They act in an advisory capacity.</p> <p>9 Q. Are examples of their discussions what they like about it, what they don't like about it, what they would like you to do?</p> <p>12 A. Yes, and it just depends on each time – it has to do with new things that we are bringing out for the Lynx machine and what their feelings are toward it, so they advise us on how we are doing.</p> <p>16 Q. How does one become a member of a Lynx advisory board?</p> <p>18 A. Invitation by OTN.</p> <p>19 Q. Do they tend to invite the larger customers?</p> <p>20 A. Not necessarily.</p> <p>21 Q. The customer advisory board, you said – first of all, the Lynx advisory board, how often do</p>	<p>66</p> <p>1 A. OTN invitation.</p> <p>2 Q. Approximately how many people serve on the customer advisory board?</p> <p>4 A. I believe 12 to 15.</p> <p>5 Q. The same question for Lynx advisory board.</p> <p>6 A. 12 to 15.</p> <p>7 Q. Does membership change from year to year?</p> <p>8 A. Yes, it can.</p> <p>9 Q. I have a document that relates to some sort of advisory committee meeting. I will let you characterize it after we mark it.</p> <p>12 (Marked Deposition Exhibit Peterson 004.)</p> <p>13 THE WITNESS: Actually when I told you it was customer advisory board, it's actually practice administrators advisory board.</p> <p>16 MR. MATT: Thanks for the clarification.</p> <p>17 MR. TRETTER: Do you have the name of the CFO?</p> <p>19 THE WITNESS: Yes, I remember the name of the CFO. Its Jim Marconi, from the previous document.</p> <p>21 Q. The court reporter has marked Exhibit Peterson 004, a document numbered BMS/AWP 0011116482</p>
<p>1 they neat?</p> <p>2 A. Once a year.</p> <p>3 Q. Physically?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Are there telephone –</p> <p>6 A. Yes, yes.</p> <p>7 Q. You have to answer out loud.</p> <p>8 Do they meet telephonically?</p> <p>9 A. Yes.</p> <p>10 Q. How often does that happen?</p> <p>11 A. I believe quarterly.</p> <p>12 Q. The same question for the customer advisory board, do they meet telephonically?</p> <p>14 A. Yes.</p> <p>15 Q. How often?</p> <p>16 A. Quarterly.</p> <p>17 Q. Do you attend the meetings of either of these two boards?</p> <p>19 A. I have attended the customer advisory board, and I have not attended the Lynx advisory board.</p> <p>21 Q. How does one become a member of a customer advisory board?</p>	<p>67</p> <p>1 to 6493. Could you please identify this document for the record?</p> <p>3 MR. TRETTER: First of all, it looks like a couple of documents. Is there an email and an attachment?</p> <p>6 Q. This is I believe the way it was produced, Ms. Peterson. If you could page through it and tell me whether this attachment belongs with the cover email, that would be helpful.</p> <p>10 A. This is an email from Sandy McMahon, page 1, and on the attachments it says "meeting summary," and the second page doesn't look like it belongs to the meeting summary – well, yes, it must be. It doesn't say page 1. I don't see page 1, but if you notice page 15 goes two, three, four, so that's all the meeting summary document, it's just there is no page 1 on this, so I don't necessarily know that it goes with this because I don't see a page 1. But it is titled Practice Administrative Advisory Board Committee Meeting.</p> <p>21 Q. Is this a document that you maintain in your files as part of your employ with OTN?</p>

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<p>1 A. Yes.</p> <p>2 Q. And this was produced from your files.</p> <p>3 Correct?</p> <p>4 A. Yes.</p> <p>5 Q. You were a recipient of the email. Correct?</p> <p>6 I see your name on the "to" line there?</p> <p>7 A. Yes.</p> <p>8 Q. If we turn to the next page it looks like you</p> <p>9 are listed as a representative who attended the</p> <p>10 meeting in Cancun, Mexico. Is that correct?</p> <p>11 A. Yes, I did.</p> <p>12 MR. TRETTER: Let the record reflect that it</p> <p>13 was August.</p> <p>14 THE WITNESS: August 2002.</p> <p>15 Q. I have a question about page number 8. In the</p> <p>16 first box there is a reference to additional</p> <p>17 benchmarking capability.</p> <p>18 A. Yes.</p> <p>19 Q. I've seen the word "benchmarking" used in a</p> <p>20 couple of documents before. What does that mean to</p> <p>21 you, if anything?</p> <p>22 MR. TRETTER: I would suggest that you read</p>	<p>70</p> <p>1 Q. Yes. Would it have been Sandy McMahon?</p> <p>2 A. The email is from Sandy McMahon, but I don't</p> <p>3 know that Sandy McMahon actually created the</p> <p>4 document. I can't tell.</p> <p>5 Q. So you are not familiar with whose</p> <p>6 responsibility it is to do this?</p> <p>7 A. No, I am not.</p> <p>8 Q. That's all the questions that I have on that.</p> <p>9 Other than the executive committee that we</p> <p>10 discussed earlier, are there any other management</p> <p>11 committees that you are aware of that exist at OTN?</p> <p>12 A. Management committees?</p> <p>13 Q. Yes.</p> <p>14 A. No.</p> <p>15 Q. So you are not a member of any sort of</p> <p>16 internal OTN committee?</p> <p>17 A. Explain that. I don't understand.</p> <p>18 Q. It's a purposefully general question.</p> <p>19 You have your role in your job, but are you</p> <p>20 also a member of any working committees within OTN on</p> <p>21 topics, anything of that nature?</p> <p>22 A. At various times I'm on projects, so that</p>
<p>1 the document, to get some context.</p> <p>2 THE WITNESS: Its under the heading Existing</p> <p>3 Product Service Enhancement, and it's talking about</p> <p>4 build on reports. This document was not produced by</p> <p>5 me, so -</p> <p>6 Q. Created, you mean?</p> <p>7 A. It was not created by me. I would be having</p> <p>8 to deduce what it would say, so is that what you want</p> <p>9 me to do?</p> <p>10 Q. Yes, based on your experience.</p> <p>11 A. Okay. Build on reports, we have reports that</p> <p>12 we have on our web site for customers, so that would</p> <p>13 be reports, customer reports. When we talk about</p> <p>14 benchmarking, benchmarking is when an account takes</p> <p>15 information for their particular account and compares</p> <p>16 it to what is going on in a region or nation, so it</p> <p>17 has to do with data benchmarking or information</p> <p>18 benchmarking.</p> <p>19 Q. Who is responsible, if you know, at OTN for</p> <p>20 making summaries of the practice - let me back up -</p> <p>21 practice administrators advisory committee meetings?</p> <p>22 A. So who created this document?</p>	<p>71</p> <p>1 would probably be a committee. It rotates. It's not</p> <p>2 like something that's standard.</p> <p>3 Q. Is that an ad hoc, project by project type</p> <p>4 committee you are referring to?</p> <p>5 A. Yes.</p> <p>6 Q. Could you give an example or two?</p> <p>7 A. A project might be like identifying targets</p> <p>8 for a particular program, so if marketing comes up</p> <p>9 with a program, then they would involve the sales</p> <p>10 management team, which I would be a part of, to sit on</p> <p>11 the committee to make sure that they are going in the</p> <p>12 right direction, so we would be giving input on that.</p> <p>13 That's an example of a committee.</p> <p>14 Q. So there is no committee that is in existence</p> <p>15 permanently that you are aware of?</p> <p>16 A. A standing committee, no, there is not.</p> <p>17 MR. TRETTER: A standing committee?</p> <p>18 THE WITNESS: A standing committee. No.</p> <p>19 Q. What types of documents do you create and</p> <p>20 provide to your manager in your role in your present</p> <p>21 position?</p> <p>22 A. Currently there are no standard documents</p>

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<p>1       that I prepare for them. There are no standard 2       documents.</p> <p>3       Q. What is the nature of the reporting 4       relationship? How do you communicate generally, and 5       on what topics?</p> <p>6       A. With my one manager, Donald Gaddy?</p> <p>7       Q. Correct.</p> <p>8       A. We have phone communication. It's usually of 9       varying topics. You referred to ad hoc, or as the 10      need arises, we have phone conversations. We 11      occasionally will have a meeting, physical meeting 12      where the sales management team gets together.</p> <p>13      Q. You say "sales management team." Who are you 14      referring to?</p> <p>15      A. The sales management team would be Ralph 16      Maesseli, the person who has the job opposite of mine, 17      and the Lynx manager, the key account managers, and 18      the groups manager and the inside director.</p> <p>19      Q. And you would all be meeting with Mr. Gaddy?</p> <p>20      A. Correct, yes.</p> <p>21      Q. Is that the way it worked before Mr. Gaddy 22      was in that position?</p>	74	<p>1       it comes to the Lynx contract. Remember I told you 2       they do the Lynx contracts. I have approval over 3       that, and approval of different pricing, so if they 4       need to give specific pricing I have approval over 5       some of those areas.</p> <p>6       Q. They need your approval?</p> <p>7       A. Yes.</p> <p>8       And then coaching and developing and training 9       is what I do for them.</p> <p>10      Q. Other than email, are there other electronic 11      means with which the TBDMs communicate with you?</p> <p>12      MR. TRETTER: Besides telephonic?</p> <p>13      Q. Yes.</p> <p>14      A. Yes, through CIA they create site notes, 15      which are sent to me, so its through that CIA, so 16      that's electronic. They create their site notes now 17      in CIA.</p> <p>18      Q. Are they required to create a site note every 19      time they visit a client?</p> <p>20      A. Yes.</p> <p>21      Q. Are they required to provide you with 22      specific information about that meeting?</p>	76
<p>1       A. Yes.</p> <p>2       Q. Do you communicate via email in addition to 3       the phone?</p> <p>4       A. Yes.</p> <p>5       Q. The email system itself, is it an OTN system 6       or a BMS system?</p> <p>7       A. It is an OTN system currently.</p> <p>8       Q. What is your email address?</p> <p>9       A. Marsha, M-A-R-S-H-A.Peterson at OTNNET.com.</p> <p>10      Q. Is that extension OTNNET.com attached to the 11      email addresses of all OTN employees?</p> <p>12      A. Yes.</p> <p>13      Q. Describe the nature of the reporting 14      relationship from the TBDMs to you.</p> <p>15      A. They communicate with me via phone and email 16      regarding day in and day out issues.</p> <p>17      Q. Is that frequently related to specific 18      accounts?</p> <p>19      A. Account specific information and issues, 20      personnel issues. I am there one up manager, so 21      vacation requests, sick time, basic management 22      functions. Then I also have approval authority, when</p>	75	<p>1       A site note is a document where they will 2       have meeting notes, so it's a historical document 3       regarding what happened during the meeting. They will 4       have specific objectives, and then they will say 5       whether they were able to attain those objectives, 6       action items.</p> <p>7       Q. Is there specific information that they are 8       required, as your manager, you require them to put in 9       the call note?</p> <p>10      A. The attendees that were at the meeting, so 11      the name and title of the different customer or OTN 12      reps that were there, they are required to put that 13      in, and they are required to write a general 14      description of the meeting, and then also there is a 15      section where they can put down -- we have different 16      programs within OTN where they can actually select 17      which programs they talked about, so they are required 18      to fill that out.</p> <p>19      Then if there are any action items, or in 20      other words the customer has questions that need to be 21      answered, then they have a section where they actually 22      enter those actions, or we call them tasks.</p>	77

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21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1 Q. Is that a flag for someone else to follow?</p> <p>2 A. Yes. A lot of times it will be assigned to</p> <p>3 another person within OTN to get an answer back to</p> <p>4 them. They are the actual owner of it and will</p> <p>5 respond back to the customer, but they will use that</p> <p>6 system to track it.</p> <p>7 Q. And they are not required to list everything</p> <p>8 that was discussed in the meeting. Correct?</p> <p>9 A. No.</p> <p>10 Q. You would be reading call notes full time if</p> <p>11 they did. Right?</p> <p>12 A. Yes.</p> <p>13 No, they aren't. The highlights of the</p> <p>14 discussion is what I want.</p> <p>15 Q. In practice do they only list the highlights?</p> <p>16 A. Pardon me?</p> <p>17 Q. In practice do they only generally list the</p> <p>18 highlights?</p> <p>19 A. Yes.</p> <p>20 Q. Do we call it the CIA database? Is that the</p> <p>21 lexicon that I should use?</p> <p>22 A. It's a reporting system, it's not actually a</p>	<p style="text-align: right;">80</p> <p>1 Q. Is it similar in format to the site notes</p> <p>2 that are presently used on the CIA system?</p> <p>3 A. Similar, yes. Obviously since it's a Word</p> <p>4 document they are a little more free text.</p> <p>5 Q. So when you were a TBDM you would complete</p> <p>6 this Word document?</p> <p>7 A. Correct.</p> <p>8 Q. And then provide it to your manager?</p> <p>9 A. Yes.</p> <p>10 Q. After each sales call?</p> <p>11 A. Yes.</p> <p>12 Q. When you were a TBDM did you maintain copies</p> <p>13 of all of your notes?</p> <p>14 A. Yes.</p> <p>15 Q. In your role as manager do you maintain</p> <p>16 copies of all the notes that are provided to you?</p> <p>17 A. As best I can.</p> <p>18 Q. Are the TBDMs instructed to maintain copies</p> <p>19 of their call notes?</p> <p>20 A. Yes. Electronic copies.</p> <p>21 Q. So would a TBDM have an electronic copy of</p> <p>22 call notes done before the institution of the new</p>
<p style="text-align: right;">79</p> <p>1 database. It's like a call reporting system and issue</p> <p>2 tracking.</p> <p>3 Q. How long are the site notes maintained in</p> <p>4 that system?</p> <p>5 A. It is, as I stated before, it is a new system</p> <p>6 that we started using in 2004, so it will be</p> <p>7 historical from that point forward.</p> <p>8 Q. Was there a system in place prior to the</p> <p>9 initiation of this new system in 2004?</p> <p>10 A. For the TBDMs there was not. They kept their</p> <p>11 call notes on a Word document, and that Word document</p> <p>12 was sent electronically to a set of people, including</p> <p>13 their team and manager.</p> <p>14 Q. Was it sent as an attachment to an email?</p> <p>15 A. Yes.</p> <p>16 Q. Did they create the document on their</p> <p>17 personal computer?</p> <p>18 A. There is a template, and then they would add</p> <p>19 to the top of it, so after each call they had they</p> <p>20 would add to the top of that the next call, and</p> <p>21 update. So it was one single document that they kept</p> <p>22 adding to, one single Word document.</p>	<p style="text-align: right;">81</p> <p>1 system in 2004?</p> <p>2 MR. TRETTER: Can I have the question back</p> <p>3 again?</p> <p>4 Q. Do you understand that question?</p> <p>5 A. It needs some clarification.</p> <p>6 Q. I will rephrase it.</p> <p>7 Before the institution of the new system CIA</p> <p>8 that used Word files, and what I'm asking is: Do they</p> <p>9 still maintain an electronic version of that Word</p> <p>10 document to this day?</p> <p>11 A. Yes. Yes, they do. Of the old prior to CIA</p> <p>12 is what you are saying?</p> <p>13 Q. Correct.</p> <p>14 A. Yes.</p> <p>15 Q. Then I'm going to ask the same question of</p> <p>16 you as their manager.</p> <p>17 A. Okay.</p> <p>18 Q. Do you keep electronic copies of those call</p> <p>19 notes that are in that prior format?</p> <p>20 A. Yes, I still have them.</p> <p>21 Q. I have some general sales and marketing</p> <p>22 questions for you.</p>

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22 (Pages 82 to 85)

<p>1        Does OTN utilize marketing plans?</p> <p>2        A. Yes. A marketing plan, you mean within the 3        marketing department?</p> <p>4        Q. Correct.</p> <p>5        A. Yes.</p> <p>6        Q. How would you characterize those plans in 7        terms of how they are produced? Are they, for 8        example, Word files, or PowerPoint?</p> <p>9        A. Since I don't create the marketing plans I 10      can't actually say how – I mean it varies. It has 11      varied over time, so it depends on who was in the 12      marketing department, how they maintained those. I'm 13      not exactly sure I'm answering that correctly.</p> <p>14       Q. You are.</p> <p>15       Can you give us some examples of marketing 16      plans that you've seen?</p> <p>17       A. Yes. Well, like at a sales meeting we will 18      get PowerPoint presentations that explain what the 19      different programs are, which would be under the plan, 20      so programs and products that we are focusing on. So 21      in a PowerPoint occasionally there will be some Word 22      documents explaining a particular program that we are</p>	<p>82</p> <p>1        she is more on the Lynx side. Those are the main 2        people. Naomi Gutierrez, and she is no longer in that 3        department.</p> <p>4        Q. You mentioned PowerPoint presentations at 5        sales meetings.</p> <p>6        A. Yes.</p> <p>7        Q. Other than PowerPoint presentations at sales 8        meetings, are there other methods by which the 9        marketing department communicates marketing?</p> <p>10       A. Yes, there are some Word documents where they 11      would explain a program, and then there is also 12      marketing material, which any sales organization would 13      have.</p> <p>14       Q. When you refer to "marketing material" you 15      are talking about materials that are provided to 16      clients?</p> <p>17       A. Brochures. Correct.</p> <p>18       Q. Word documents and PowerPoint, would they be 19      primarily for internal use?</p> <p>20       A. The PowerPoints, yes, for internal use.</p> <p>21       Occasionally we will have some PowerPoint presentation 22      material that they will put together for the sales</p>
<p>1        working on.</p> <p>2        Q. Who have you worked with in marketing, the 3        names of people?</p> <p>4        A. Well, currently Gena, Jeff Doherty, 5        D-O-H-E-R-T-Y, Stan Ades, A-D-E-S. Those are the main 6        people I work with in marketing currently.</p> <p>7        Q. Who is Mr. Doherty?</p> <p>8        A. He is a product manager.</p> <p>9        Q. The same question for Mr. Ades.</p> <p>10       A. The same.</p> <p>11       Q. In the past have there been other personnel 12      in marketing?</p> <p>13       A. Yes.</p> <p>14       Q. Can you give me some names, please?</p> <p>15       A. Jennifer Dolan, she was the director, Nancy 16      Nazmi.</p> <p>17       Q. Was Sandy McMahon one?</p> <p>18       A. Yes, Sandy McMahon. That was quite awhile 19      ago.</p> <p>20       Rob Dubman, he was also quite a while ago, 21      several years ago.</p> <p>22       Regina, but I don't work with her very much,</p>	<p>83</p> <p>1        force.</p> <p>2        Q. For the sales force to use with clients?</p> <p>3        A. Correct.</p> <p>4        We have a few CDs which we will have as 5        training CDs, so if we have a program that requires 6        some training by a sales rep we might put it on a CD.</p> <p>7        Q. When you say "training CDs," are you 8        referring to CDs that are meant for the sales force to 9        review?</p> <p>10       A. Its meant for the sales rep to put on their 11      computer so they can train a customer on how to use a 12      particular product.</p> <p>13       Q. Can you give me examples of products that you 14      just referred to?</p> <p>15       A. Yes. The most recent one would be the on 16      line banking, which is a method for our customers to 17      pay their bills.</p> <p>18       Q. Do you have training CDs to use Lynx?</p> <p>19       A. No, not currently.</p> <p>20       Q. In the past did you?</p> <p>21       A. I'm trying to think. Yes, we had one.</p> <p>22       Q. Do you know what it entailed?</p>

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23 (Pages 86 to 89)

<p>1     A. It was like a demo, so it just gave screen 2 shots of the computer software so we could walk a 3 customer through how they would actually add and 4 remove a drug from the machine.</p> <p>5     Q. The screen shots that you referenced, did 6 they include price reports?</p> <p>7     A. No. That particular demo was literally how 8 to use the machine. So when you would go up to it, it 9 would say this is your first screen that you need to 10 do, and this is how you go and add a drug and remove a 11 drug, so it was all operational, simply operational.</p> <p>12    Q. It didn't give examples of all the various 13 reporting capabilities?</p> <p>14    A. No, not on that one. The documentation 15 before that, the examples were in marketing hard copy, 16 like brochures would be where that would have been.</p> <p>17    We have had a few PDF files, so a PDF file 18 might be something that we had a hard copy of. We 19 might have it in PDF as well.</p> <p>20    Q. Other than the training CDs that you just 21 mentioned, is there any other software that the TBDMs 22 would use with customers in terms of a demonstration</p>	86	<p>1     Q. Yes. 2     A. No, there is not.</p> <p>3     Q. Are there formal guidelines, ethical or 4 otherwise, that the TBDMs are given and are expected 5 to abide by?</p> <p>6     A. I see what you are saying. Yes, the OIG 7 guidelines, we very much follow the OIG guidelines. 8 Obviously there is HIPAA, so we all have to sign off 9 and make sure that we keep within the guidelines of 10 HIPAA.</p> <p>11    Depending on where you are, I mean obviously 12 if you are in a practices facility you have to abide 13 by whatever guidelines the facility has. If you are 14 in a facility there are certain guidelines the 15 facility might have, and our representatives need to 16 follow whatever guidelines the facility would have.</p> <p>17    We do have a code of conduct that we follow, 18 and there is a document that shows what our code of 19 conduct is, which just basically says that we follow 20 OIG guidelines, and we have ethical behavior.</p> <p>21    Q. How are these guidelines that you have just 22 discussed communicated to the sales force?</p>	88
<p>1     environment? 2     A. No, no. 3     I should clarify too, that a lot of that 4 stuff is current. Things change all the time. So 5 currently what we have is that on line banking CD, and 6 that's currently the only training thing we have for a 7 TBDM.</p> <p>8     Q. How about in the past? Have the TBDMs 9 utilized any other sort of demonstration software?</p> <p>10    A. The only things that we ever really had were 11 the ones that I mentioned, were the Lynx one, and then 12 training, and that's it.</p> <p>13    Q. How are sales policies communicated through 14 the organization?</p> <p>15    A. Maybe you could explain to me what you mean 16 by "sales policies."</p> <p>17    Q. Do you have guidelines that TBDMs are 18 supposed to follow when they are on sales calls, like 19 formal guidelines?</p> <p>20    A. I'm not exactly sure if I know what you mean 21 by that, by "sales policies." Like is there a policy 22 and procedure manual?</p>	87	<p>1     A. There is an actual document. Sometimes its 2 in our PowerPoint presentations, but there is a Word 3 document that spells out what our code of conduct is. 4     Q. Do you know if you produced that? 5     A. I don't know. It is on my computer. (Discussion off the record.) 6     Q. I have a follow-up question in mind on the 7 former guidelines. Are there any rules pertaining to 8 — are the sales reps not allowed to show certain 9 information to clients? That's a very general 10 question. 11    MR. TRETTER: I will have to object to the 12 form. 13    Q. Are there any guidelines that are given to 14 the TBDMs that they are not supposed to show certain 15 information, other than what's contained in the OIG 16 guidelines? 17    A. Specific to what? 18    Q. Anything. 19    A. I'm not sure what documents you are talking 20 about. 21    Q. Neither am I. The question is purposefully</p>	89

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24 (Pages 90 to 93)

<p>1 open.</p> <p>2 MR. TRETTER: Pornography? Child pornography</p> <p>3 would be bad.</p> <p>4 Q. Are there any written policies that say you</p> <p>5 are not supposed to show certain things to clients?</p> <p>6 A. The way to respond to that is if there is a</p> <p>7 document that we should not show a client, it usually</p> <p>8 will say "for internal purposes only." If we have OIG</p> <p>9 guidelines, that's general. So internal documents are</p> <p>10 internal documents.</p> <p>11 Q. So if it says "for internal purposes only"</p> <p>12 the salesperson is not supposed to share it with a</p> <p>13 customer?</p> <p>14 A. Right.</p> <p>15 Q. As a matter of practice do you know whether</p> <p>16 salespeople do show documents that are titled for</p> <p>17 internal purposes only to clients?</p> <p>18 A. I believe they do not.</p> <p>19 Q. Did you ever when you were a RBDM?</p> <p>20 A. No, no.</p> <p>21 (Marked Deposition Exhibit Peterson 005.)</p> <p>22 Q. Could you please identify for the record</p>	<p>90</p> <p>1 MR. TRETTER: Some of the requests are</p> <p>2 parroted in Peterson 5, but it's not the actual</p> <p>3 request that was conveyed to her.</p> <p>4 MR. MATT: Do you want to just tell me what</p> <p>5 you gave her?</p> <p>6 MR. TRETTER: I gave the witness the actual</p> <p>7 section from the notice of deposition that was</p> <p>8 directed to her. That was not the subpoena. There</p> <p>9 was a notice of deposition that you subsequently</p> <p>10 served upon us.</p> <p>11 MR. MATT: Thank you.</p> <p>12 MR. TRETTER: And she received that</p> <p>13 document. At least she received the portion of the</p> <p>14 document that actually had the requests. I think they</p> <p>15 were both directed to her and to Gena, so that's what</p> <p>16 she got.</p> <p>17 MR. MATT: I will withdraw Exhibit Peterson 006.</p> <p>18 MR. TRETTER: Each of your requests in your</p> <p>19 deposition notice are repeated in our responses, so</p> <p>20 she would have seen in your format each one of those</p> <p>21 requests.</p> <p>22 Q. Do the requests that you are flipping</p>
<p>1 Exhibit Peterson 006?</p> <p>2 A. It says on the top United States District</p> <p>3 Court, District of Oregon, subpoena in a civil case.</p> <p>4 Q. Have you seen this before?</p> <p>5 A. No, I have not.</p> <p>6 Q. Can you please identify Exhibit Peterson 005</p> <p>7 for the record?</p> <p>8 A. United States District Court for the District</p> <p>9 of Massachusetts.</p> <p>10 MR. TRETTER: Did you mean to give her our</p> <p>11 response?</p> <p>12 MR. MATT: Yes.</p> <p>13 Q. Let me help you. This is the Response to</p> <p>14 Defendant Bristol-Myers Squibb Oncology Therapeutics</p> <p>15 and Apothecon, Inc. to Plaintiff's Request for</p> <p>16 Documents to be Produced by Marsha Peterson.</p> <p>17 Have you seen this document before?</p> <p>18 A. No, this doesn't look the same.</p> <p>19 MR. TRETTER: The witness has seen the actual</p> <p>20 request.</p> <p>21 Q. So the actual request then would begin on</p> <p>22 page 6?</p>	<p>91</p> <p>1 through, Ms. Peterson, on Exhibit Peterson 005, do those</p> <p>2 requests, not the responses, but the requests look</p> <p>3 generally familiar to you?</p> <p>4 A. Yes, they do.</p> <p>5 Q. What kind of documents do you maintain in</p> <p>6 your home office?</p> <p>7 A. Hard copy and electronic.</p> <p>8 Q. Do you have a PC?</p> <p>9 A. I have a PC, yes.</p> <p>10 Q. And the hard copy files, what do you keep in</p> <p>11 hard copy format that's associated with your work with</p> <p>12 OTN?</p> <p>13 A. It's actually quite limited. I have some</p> <p>14 basic Lynx manuals which are training manuals.</p> <p>15 As far as hard copies, I have marketing</p> <p>16 material like hard copy customer marketing material.</p> <p>17 I have notes that I write myself which I keep in my</p> <p>18 action items and things that I do. My personal notes</p> <p>19 are hard copy, which I actually throw away when they</p> <p>20 are done, so I don't keep those long-term. They are</p> <p>21 just personal notes, and then just various</p> <p>22 miscellaneous documents that are current.</p>

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25 (Pages 94 to 97)

<p>1 Q. How long do you keep customer marketing 2 materials in hard copy format? 3 A. As long as they are applicable. 4 Q. How long do you keep Lynx manuals? 5 A. The actual Lynx manual I've had since I went 6 to training back in 1999. It's the same manual. I 7 have not upgraded mine or changed mine. 8 Q. Is the manual updated – 9 A. Yes. 10 Q. Do you receive sheets that you put into it? 11 A. So it's the same manual. 12 Q. And various miscellaneous documents, could 13 you give me some examples? 14 A. Some presentations that I've actually printed 15 out that are also on electronic. The answer is no. 16 Mostly everything is electronic. Mostly its brochures 17 and binders that have been given at meetings, and 18 training materials. Those are mostly what's in hard 19 copy, and then I do have a file folder for each of my 20 reps which I keep their personnel documents in. 21 Q. Do the representatives create annual business 22 plans for you?</p>	<p>94</p> <p>1 How did you go about searching your 2 electronic files for documents – you have to wait for 3 me to finish because she can't write two people at one 4 time. She's good, but not that good. 5 The question was: You just described 6 reviewing the requests that plaintiff submitted and 7 then searching your hard copy files. You did the same 8 thing for your electronic files. Correct? 9 MR. TRETTER: Objection to form. 10 Q. I'm trying to find out how you researched 11 your electronic files for potentially responsive 12 documents. 13 A. I turned them over to my attorney. 14 Q. That's the easiest way to do it. What did 15 you turn over, exactly? 16 A. My computer. 17 Q. So you turned over your entire hard drive? 18 MR. TRETTER: We got an image of her hard 19 drive, and we also took the emails off of the system 20 so that those were obtained as well. 21 Q. So you didn't make any selections personally 22 off of your hard drive?</p>
<p>1 A. Most years they have. Yes. 2 Q. Would those be found in a file folder for 3 each representative? 4 A. No, they are actually electronic. 5 Q. If you were to take all of your hard copy 6 documents that are related to your work with OTN and 7 box them up, approximately how many boxes would you 8 estimate that would entail? 9 A. Two. 10 Q. Did you provide all of those hard copy 11 documents to your attorneys? 12 A. I provided all the applicable ones that were 13 on the statements asking for information. 14 Q. So you went through the requests? 15 A. I went through each one individually and 16 pulled out everything that applied to the question 17 asked. 18 Q. And then you provided those to your 19 attorneys? 20 A. Yes, I did. 21 Q. I'm going to ask you the same question with 22 respect to electronic documents.</p>	<p>95</p> <p>1 A. No, I did not. 2 Q. The same for email? 3 A. Correct. 4 (Discussion off the record.) 5 Q. What type of drugs does OTN sell? 6 A. OTN sells drugs that are specific to an 7 oncology based practice, and in addition we do sell 8 drugs to rheumatology and urology, a couple other 9 different specialties – any drug that gets infused 10 are ones that we sell. Anything in regards to 11 anything for oncology, supportive care. It's a very 12 long list. 13 Q. Are all your drug sales made out of your 14 distribution center? 15 A. All of our products come from our 16 distribution center. Yes. 17 Q. Another way of asking that question would 18 be: Are there any drugs that you sell that you don't 19 take physical possession of, meaning OTN doesn't take 20 physical possession of? 21 A. I'm not sure that I'm actually able to answer 22 that question because I'm not a warehouse person.</p>

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## 26 (Pages 98 to 101)

	98		100
1	Q. So it's possible, you just don't know?	1	A. I know that.
2	A. I don't know.	2	Any examples in our marketplace that you can
3	Q. Who are OTN's clients?	3	think of that would help me?
4	A. OTN's clients are office based practices, and	4	Q. Kaiser.
5	not just specifically oncology. We do sell to	5	A. Not to my knowledge.
6	rheumatology and urology, so anybody that is going to	6	Q. I'm trying to ask the question globally –
7	do infusions. So it is specialized, but our customer	7	A. No, we don't; not HMOs.
8	base is broader than that, so anybody that needs to	8	Q. What about other managed care type entities,
9	buy drugs in the specialty area.	9	which would be Blue Cross Blue Shield, Aetna?
10	Q. Is the acronym OBO frequently used to refer	10	A. No. We sell to the physician office
11	to office based oncology?	11	practices.
12	A. Yes, exactly.	12	Q. The actual office itself?
13	Q. Can you give me some examples of your larger	13	A. Yes.
14	OBO customers?	14	Q. Other than OBOs and rheumatology and urology,
15	A. Redwood Regional, the key accounts, the ones	15	are there any other clients that are customers of OTN,
16	I mentioned before, Fox Valley.	16	that you can think of?
17	MR. TRETTNER: The key accounts.	17	A. There is internal medicine, but also if it's
18	Q. Do you sell to hospitals?	18	an internal medicine group, most likely they are
19	A. No, we do not.	19	providing chemotherapy to the patient, so it might be
20	Q. Why is that?	20	a multi specialty clinic that has an oncology practice
21	A. I believe it has to do with class of trade.	21	in it. Because there are stand alone oncology
22	It's where we sell to. It's the marketplace we sell	22	practices where they are just a building and they are
	99		101
1	to. We do not sell to hospitals.	1	oncologists, that's our primary focus, but within like
2	Q. OTN chooses not to sell to hospitals?	2	a multi specialty clinic they will have an oncologist,
3	A. We choose not to sell to hospitals.	3	so we will sell to those if it's an outpatient
4	Q. Is there a particular reason why?	4	clinic.
5	A. The way I've been explained is it's a class	5	Different groups are out there.
6	of trade issue. We sell to the office based setting.	6	Gastroenterologists might be in there for Crohn's
7	Anyone who fills out Medicare part B, that's the class	7	disease. It's not so much that we worry about what
8	of trade.	8	their specialty is, its if they order any drugs that
9	Q. Do you sell to pharmacy benefit managers?	9	we sell. Our primary is medical oncology.
10	A. Explain, please.	10	Q. Do you sell to U.S. Oncology? I think you
11	Q. Do you know what a pharmacy benefit manager	11	named them as a competitor?
12	is?	12	A. No, we do not.
13	A. I do, but I want to make sure that I	13	Q. Did you used to?
14	understand what you mean.	14	A. No, not to my knowledge, not in the time
15	Q. CareMark, Medco, formerly Advanced PCS,	15	period I worked for OTN we have not.
16	Express Scrips.	16	Q. Does U.S. Oncology always been a distributor,
17	A. No, we don't, not to my knowledge do we	17	do you know?
18	currently sell to those groups. No.	18	A. Historically U.S. Oncology has gone out to
19	Q. What about to HMOs?	19	bid for a distributor, that is what they did in the
20	A. If you can give me an example, that would	20	past. So they would go out and they had a distributor
21	help.	21	that they contracted with, and they currently are
22	Q. A health maintenance organization.	22	setting up their own distribution.

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<p>1 Q. OTN is a wholly owned subsidiary of BMS.</p> <p>2 Correct?</p> <p>3 A. Correct.</p> <p>4 Q. And OTN sells BMS drugs. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. OTN sells non-BMS drugs, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Are there any manufacturers that produce</p> <p>9 oncology, rheumatology or urology drugs from which OTN</p> <p>10 does not purchase?</p> <p>11 A. I do not believe so. I think we purchase</p> <p>12 from any manufacturer that our customers need drugs</p> <p>13 from. Tap Pharmaceutical is one that is more of a</p> <p>14 direct, so I think we can get it from them, if we need</p> <p>15 to.</p> <p>16 Q. So you don't usually sell Lupron?</p> <p>17 A. No.</p> <p>18 Q. Do you know what percentage of BMS oncology</p> <p>19 drug sales are made through OTN?</p> <p>20 A. In what time period? What dates?</p> <p>21 Q. Currently.</p> <p>22 A. Today?</p>	<p>102</p> <p>1 most contact with us.</p> <p>2 Q. How does OTN work with BMS?</p> <p>3 A. Would you explain what you mean by "work</p> <p>4 with"?</p> <p>5 Q. The working relationship, what is it?</p> <p>6 A. Between like my personal job responsibility?</p> <p>7 Q. Let's start there.</p> <p>8 A. It's being owned by Bristol. I would say</p> <p>9 it's more of a communication method. It's part of the</p> <p>10 team, and we do communicate with them. Most of it is</p> <p>11 if a territory business development manager is in a</p> <p>12 particular territory and needs to get to know a</p> <p>13 certain practice, and they don't know anyone in it,</p> <p>14 they might call the Bristol rep and say hey, do you</p> <p>15 know somebody, and could you introduce me? That's</p> <p>16 pretty much what the relationship is.</p> <p>17 It's the same for all manufacturers. That's</p> <p>18 how we work with our manufacturers, as a distribution</p> <p>19 company. That's the main focus of it today.</p> <p>20 Q. I have seen references in documents to BMS</p> <p>21 OTN synergy. What does that mean?</p> <p>22 A. What that means is that obviously they are</p>
<p>1 Q. Yes.</p> <p>2 A. It would have to be a guess. It's a fairly</p> <p>3 small percent. Its less than 10 percent.</p> <p>4 Q. What about in the past?</p> <p>5 A. When Taxol and Paraplatin were branded drugs</p> <p>6 it was probably more in the 20 percent, and again,</p> <p>7 that's a guess. I don't have the numbers off the top</p> <p>8 of my head.</p> <p>9 Q. Approximately when did Taxol come off patent?</p> <p>10 A. Honestly, it's been awhile. I can't</p> <p>11 remember. I would say it came off patent in 2001, the</p> <p>12 latter part 2001. I don't actually remember the exact</p> <p>13 date.</p> <p>14 Q. The same question for Paraplatin.</p> <p>15 A. That is more recently. That was last year,</p> <p>16 2004.</p> <p>17 Q. Who at BMS would have the most knowledge</p> <p>18 about OTN?</p> <p>19 A. That's a broad question. What do you mean,</p> <p>20 "knowledge of OTN"?</p> <p>21 Q. Most familiar with, works the most with OTN.</p> <p>22 A. Their sales force. They probably have the</p>	<p>103</p> <p>104</p> <p>1 partners, being that they are our parent company, and</p> <p>2 it is advantageous to work with the BMS partners</p> <p>3 because there are so many. You see that there are 12</p> <p>4 territory business development managers. There are a</p> <p>5 lot more BMS folks out there, so if we have a good</p> <p>6 relationship with them it helps us get to know our</p> <p>7 customers better.</p> <p>8 Q. So the TBDM, is their contact with BMS</p> <p>9 primarily through a BMS sales representative in the</p> <p>10 same territory?</p> <p>11 A. Its predominantly through sales rep to sales</p> <p>12 rep.</p> <p>13 A lot of times the TBDM will actually</p> <p>14 communicate with the district managers as well because</p> <p>15 there are so many as far as a relationship of number</p> <p>16 of people. It's easier sometimes just to talk to the</p> <p>17 district manager.</p> <p>18 Q. When you say "district manager," you are</p> <p>19 talking about the BMS district sales manager?</p> <p>20 A. Correct.</p> <p>21 Q. Do TBDMs at OTN go on sales calls with BMS?</p> <p>22 A. Occasionally, occasionally.</p>

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<p>1        Again, I would like to refer to the fact that      2 it depends on the time frame and the dates. Currently      3 we don't work with them as much as we used to. It      4 just varies.</p> <p>5        Q. Why is that currently?</p> <p>6        A. Right now both Taxol and Paraplatin are      7 generic so they are not as much of a focus for the      8 Bristol folks. It's not as much of a percentage. As      9 I said, our percentage of how much we sell with them,      10 that kind of dictates how much time we spend with      11 them.</p> <p>12      Q. What reports does OTN provide to BMS?</p> <p>13      A. I can only speak to what I know, and as far      14 as a manager or any of my reps, what we provide to      15 them, currently we don't provide -- personally we      16 don't provide any reports today to them.</p> <p>17      Q. When you say "we," you are talking about who?</p> <p>18      A. Myself, or people that report to me. We      19 don't have anything that we report to them on.</p> <p>20      Q. In the past was that different?</p> <p>21      A. In the past, yes. There were some documents      22 when we had programs, that as a distributor when you</p>	<p>106</p> <p>1        A. Yes, it is.</p> <p>2        Q. What generic Taxol products does OTN sell?</p> <p>3        A. We sell Bedford, and I can't remember the      4 other names. There are a couple different ones that      5 we sell. Onxol kind of came and went in the      6 marketplace, so when we were selling generics we would      7 pick up a couple of the different ones.</p> <p>8        Q. When you say "Onxol came and went," what do      9 you mean by that?</p> <p>10      A. That was the very first generic that came      11 out, and then many others flooded the marketplace, and      12 once many others flooded the marketplace Onxol became      13 just one of the many. That's what I mean by it kind      14 of came and went.</p> <p>15      Q. So you don't necessarily carry all the      16 generics for a particular drug?</p> <p>17      A. No, no. There are many generic      18 manufacturers, and we usually pick a couple.</p> <p>19      Q. OTN contracts to sell drugs to OBOs at a      20 certain price. Correct?</p> <p>21      A. Explain the word "contract" in your      22 question.</p>
<p>107</p> <p>1        work with a particular manufacturer, in which we have      2 many, you work with a particular manufacturer if you      3 have a program with them, then you have a higher level      4 of communication, so you might have target lists      5 together that say we are going to be calling on this      6 subset of customers, so that information may be shared      7 back and forth.</p> <p>8        Q. What type of programs come to mind?</p> <p>9        A. When there were Taxol programs or Carboplatin      10 programs that we had, that was mostly where we had      11 kind of the synergy going back and forth and making      12 sure that we were bringing those programs to the      13 customer so that they could optimize them.</p> <p>14      Q. I have some documents that we will talk about      15 later, something about buckets and things that I will      16 need to ask you to explain to me regarding Taxol.</p> <p>17      A. If I can remember.</p> <p>18      Q. Are you familiar with Sultan Szabo?</p> <p>19      A. No, I am not. I would remember that one.</p> <p>20      Q. Does OTN sell Onxol?</p> <p>21      A. No, we don't.</p> <p>22      Q. Onxol is generic Taxol. Correct?</p>	<p>109</p> <p>1        Q. Let me back up. That's a good question from      2 you. Thank you.</p> <p>3        The pricing at which OTN sells drugs to      4 clinics, how is that established?</p> <p>5        A. OTN is a distributor, so we will negotiate      6 pricing with an account. That's either one drug at a      7 time, or if someone wants to buy all their drugs we      8 will negotiate what we call like a portfolio of      9 products. You can buy them all, or if you want to buy      10 a couple, we will negotiate one on one. That's how we      11 sell our pricing.</p> <p>12      Q. So your pricing can vary from account to      13 account?</p> <p>14      A. Yes, it can.</p> <p>15      Q. Generally do larger accounts get better      16 pricing because they are higher volume purchasers?</p> <p>17      A. Yes. Like I said, again, it goes to whether      18 they want to buy an individual drug or a set of drugs,      19 so volume can be dependent upon maybe one particular      20 drug and they want to buy a large involve it, or maybe      21 all of the drugs they buy is a large volume. It      22 depends on the situation.</p>

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<p>1     Q. So pricing can depend on volume of overall 2     drugs and also volume of specific drugs. Correct? 3     A. Right. 4     Q. A customer can purchase some drugs from you 5     and some drugs from another distributor. Is that 6     correct? 7     A. That's correct. 8     Q. It's not an exclusive relationship? 9     A. Right. That's the decision of the customer. 10    Q. You would obviously prefer that they would 11    purchase all of their drugs through OTN, though, 12    correct? 13    A. We would prefer that. 14    Q. Who within OTN is ultimately responsible for 15    approving the price at which a particular account is 16    going to purchase the drugs through OTN? 17    A. Actually there is a lot of variability to 18    that. You can imagine we have a lot of different 19    customers. As I mentioned before, there is pricing 20    for a bid, so if someone goes out to bid, whether it 21    is a large practice that goes out to bid, or a state 22    society, then that bid process is within the group's</p>	<p>110 1     have to go to Mr. Gaddy? 2     A. Yes. There are those two different 3     scenarios, and then just individual -- a lot of times 4     the reps have some authority at their level too. 5     Q. Do you monitor the pricing of your 6     competitors? 7     A. Yes. 8     Q. OTN, that is. 9     A. Yes, OTN does. 10    Q. Is that a factor that OTN takes into 11    consideration in establishing its own pricing? 12    A. It's what the market would bear. In 13    distribution you kind of look at what is going on. It 14    may be more account specific, or it just may be in 15    general what the market is doing. 16    Q. Do you specifically within the realm of your 17    responsibility monitor the pricing that your 18    competitors offer? 19    A. If I have knowledge of what the competitive 20    pricing is I make myself aware of that, because it's 21    competitive knowledge. I don't actually monitor, 22    per se, and have spreadsheets and own the monitoring</p>
<p>1     manager and the VP of sales. They are the ones who 2     work on that pricing, and the VP of sales would 3     ultimately -- and finance -- would ultimately be the 4      approvers of that type of pricing. So that's one kind 5     of group. 6       If it's an individual practice, and 7     depending on their size, we have programs for people 8     who want to commit, so it's not really a bid, but they 9     are saying we choose you as our primary vendor and we 10    would like to get the best pricing possible. 11    That authority for that type of pricing lies 12    with me, as far as, you know, we have a set of 13    pricing, and if we want to do any negotiation with 14    that individual practice, that would lie with me as 15    well as depending on the aggressiveness of the pricing 16    may go to my one up manager, which would be Don Gaddy, 17    and it may even have to go to John Amos or Jim 18    Marconi. 19    Q. So you have certain parameters that you have 20    authority to negotiate within? 21    A. Yes. 22    Q. And if it goes outside of that parameter you</p>	<p>111 1     of that. 2     Q. Does someone else within OTN, to your 3     knowledge? 4     A. Yes. 5     Q. Who would that be? 6     A. That falls under the responsibility of the 7     marketing department. 8     Q. Has it always been the responsibility of the 9     marketing department? 10    A. Actually it's gone back and forth. Sometimes 11    it ends in the finance department. It has been there 12    at some point in time. Its in marketing. Obviously 13    it's a multiple responsibility type of thing. 14    Q. Do you monitor average wholesale prices that 15    are contained in Red Book? 16    A. Do I monitor them? 17    Q. Yes. Do you reference them at all? 18    A. I think the word "monitor" is confusing to 19    me because "monitor" assumes that I'm tracking and 20    watching and have input on it. 21    Average wholesale price in our distribution 22    world is simply something that our customers need to</p>

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<p>114</p> <p>1 do to reference for their business, so we as a company 2 may have different – whether it's a link on a web 3 site or something else – have areas where they can 4 see what the AWPs are for business purposes.</p> <p>5 Q. There is information within Lynx that shows 6 AWPs?</p> <p>7 A. Not Lynx. Lynx To OTN is our web site, and 8 there are many different links -- L-I-N-K-S -- links 9 within a web site that help to provide information to 10 a customer. So AWP specifically, which would come 11 from Red Book, is updated.</p> <p>12 There is a section in our web site where they 13 can go and get an AWP report that would literally show 14 them what AWP is, and that's simply as a reference 15 point.</p> <p>16 Q. Would they access that through the Lynx To 17 OTN web site?</p> <p>18 A. Yes, they would get a report out of there, 19 and that report is actually straight from Red Book. 20 There is a little link up on top that says when it was 21 updated.</p> <p>22 Q. So OTN loads the information from Red Book?</p>	<p>116</p> <p>1 drug at whatever the price is from the manufacturer, 2 and then there is a contract dollar amount. We sell 3 it for whatever that contract dollar amount is, and 4 the difference between those two is the chargeback 5 that then is received back from the manufacturer to 6 OTN.</p> <p>7 Does that make sense?</p> <p>8 Q. Okay. In that situation OTN does receive 9 chargebacks?</p> <p>10 A. Yes.</p> <p>11 Q. You sell at the contract price?</p> <p>12 A. We sell at the contract price or the contract 13 minus whatever the price is, and then the manufacturer 14 will make up the chargeback which is the difference 15 between what they sold it to us for and what the 16 contract price was.</p> <p>17 Q. Is that very common? What I'm trying to get 18 is an appreciation of the volume of sales that OTN 19 makes that involve chargebacks.</p> <p>20 A. You know, again, this is an evolution because 21 originally, even when I started out, there weren't as 22 many contracts as there are today. There are a lot</p>
<p>115</p> <p>1 A. Its linked to our web site. 2 Q. Its linked? 3 A. Right, to our web site, and put into a report 4 that our customer can print out. Actually in 5 distribution that's very common practice to have it 6 listed there just for reference sake.</p> <p>7 Q. That's because the customers, they base their 8 reimbursement on the AWP, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And that's true in the Medicare context?</p> <p>11 A. Yes, and private payers.</p> <p>12 Q. Has that always been the case since you've 13 been with OTN?</p> <p>14 A. Yes.</p> <p>15 Q. Are you familiar with the term "chargeback"?</p> <p>16 A. Yes, I am.</p> <p>17 Q. What does it mean?</p> <p>18 A. Chargeback, what that is to me is that within 19 a distributor, if -- let me go back.</p> <p>20 Chargeback is when there is a contract 21 between a manufacturer and whether its with a GP or 22 wherever that contract lies, then OTN will buy the</p>	<p>117</p> <p>1 more contracts today because the customers have 2 mandated that from manufacturers. So obviously the 3 more contracts you have the more chargebacks you end 4 up having. It's not something that we particularly 5 dictate. The contracts are between the manufacturer 6 and the customer, actually. That's where the 7 contracting happens.</p> <p>8 Q. So it has become more common over time?</p> <p>9 A. Yes, and its becoming a larger percentage of 10 our business. Yes.</p> <p>11 Q. Who within OTN handles that process?</p> <p>12 A. We actually have a contracts and chargebacks 13 department which is within the finance department.</p> <p>14 Q. Does OTN ever pay chargebacks?</p> <p>15 A. What do you mean?</p> <p>16 MR. TRETTER: Objection to the form.</p> <p>17 Q. Would there be any scenario under which OTN 18 would sell a drug to a wholesaler?</p> <p>19 A. No, not to my knowledge.</p> <p>20 Q. How about another distributor, another 21 competitor?</p> <p>22 A. Do they do that?</p>

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<p>1     Q. No. Would OTN – is there any circumstance 2 under which OTN actually sells drugs to a competitor? 3     A. To a competitor, no. 4     Q. Like priority. 5     A. I don't think so, but that's not exactly 6 within my scope of knowledge either. 7       MR. TRETTER: He is only asking for what you 8 know. 9     Q. That's correct. 10    A. I know what I know. 11    Q. How does OTN negotiate pricing with 12 manufacturers? Who is responsible for that? 13    A. Our business development department. 14    Q. Have you ever been involved in that aspect of 15 the business? 16    A. No, I have not. 17    Q. Is business development part of finance? 18    A. No. 19    Q. It's independent? 20    A. It's an independent department. 21    Q. Are you familiar with the drug manufacturers 22 of which OTN does have agreements?</p>	<p>118</p> <p>1     development, what their roles and responsibilities 2 are, but they do work with the manufacturers, because 3 we have relationships with all manufacturers as a 4 distributor, which you would. The actual contracting, 5 though, is usually done by the GPO.</p> <p>6     Q. BMS establishes OTN's price for BMS drugs. 7     Correct?</p> <p>8     A. That is correct.</p> <p>9     Q. Has that always been the case since you've 10 been with OTN?</p> <p>11    A. Yes. They establish the price. Yes.</p> <p>12    Q. They establish OTN's selling price?</p> <p>13    A. Yes.</p> <p>14    Q. For BMS drugs only, right?</p> <p>15    A. Yes.</p> <p>16    Q. Are there any other manufacturers that 17 establish OTN's selling price?</p> <p>18    A. Well, yes. Again, this is not my area of 19 expertise, but I would say when it comes to branded 20 drugs, and you've got a manufacturer, they pretty much 21 go to the distributor and say this is the price of 22 that drug, so they sell it to you for a certain</p>
<p>1     A. What type of agreements? 2     Q. Let me back up. 3       If OTN is purchasing a drug from Amgen, let's 4 say, is there a contract that's negotiated? 5       A. There is a contract with Amgen, but it is not 6 between OTN and Amgen, it's between a GPO and Amgen, 7 so the GPO is the one who actually has the contract, 8 and then the customer will select on contract who 9 their distributor will be. So they will actually buy 10 the drug from us; but the contract will be with the 11 GPO. 12    Q. Doesn't OTN negotiate specifically with 13 manufacturers to purchase drugs that OTN then takes 14 within inventory? 15    A. Yes. There is generic contracts and some 16 other things that we do. I'm not actually sure where 17 the dividing line is with that. Most of that work is 18 done within the GPO side of things. 19    Q. The business development department? 20    A. No, business development works with the 21 manufacturers. 22    I can't really explain the business</p>	<p>119</p> <p>1     price. It's not like with branded drugs, that's just 2 kind of the way it is.</p> <p>3     Q. That's different, though, than saying you, as 4 OTN, have to charge this price?</p> <p>5     A. Correct.</p> <p>6     Q. No other manufacturer does that, correct?</p> <p>7       MR. TRETTER: You are assuming that BMS tells 8 them that they have no discretion as to negotiating 9 price?</p> <p>10    Q. Let me lay a foundation for that.</p> <p>11    A. Yes.</p> <p>12    Q. The question is not does the price at which 13 OTN purchase the drugs from manufacturers influence 14 the price that OTN charges, my question is, and I'm 15 referring to Mr. Saber's prior testimony, at least my 16 understanding of it, that for the sales that OTN makes 17 of BMS drugs, BMS tells OTN what OTN charges OTN's 18 clients. Is that correct, to your understanding?</p> <p>19    A. You know, there are a lot of different drugs 20 that BMS has. There is the multi source or the 21 branded, so we have different drugs. There are some 22 different rules.</p>

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<p>1     Q. Let's start with branded.</p> <p>2       MR. TRETTER: Let me just say, I think maybe 3 you are thinking about a floor price, and that 4 sometimes BMS might set a floor price, but there would 5 be other prices that they could negotiate, that OTN 6 would have the authority on its own to negotiate.</p> <p>7     Q. Do you have specific knowledge in this arena, 8 Ms. Peterson?</p> <p>9       A. I think that I'm actually – maybe what you 10 are asking me is maybe not what I'm thinking in my 11 head. I would like to have you rephrase the question 12 and kind of think about this differently again.</p> <p>13     Q. Sure. Let's use the example of branded 14 drugs. We will go to generics next.</p> <p>15       The BMS branded drugs sold through OTN, does 16 BMS tell OTN what to charge for those drugs?</p> <p>17       A. They don't tell us what to charge for those 18 drugs. That's where the clarification is. They will 19 set a floor price. They will say here is a floor 20 price. We, as the distributor, still have the ability 21 to negotiate a price with the customer.</p> <p>22     Q. What does floor price mean?</p>	122	<p>1     have our authorities, but I'm not sure of the 2 necessary mechanics behind it.</p> <p>3     Q. Do any other manufacturers establish a floor 4 price for OTN to sell drugs at?</p> <p>5       A. Again, I'm not in the negotiation with 6 different manufacturers so I can't say yes or no to 7 that. I don't really know the answer to that.</p> <p>8       Q. Fair enough. Do you know who would know the 9 answer?</p> <p>10      A. I would say it's probably, you know, that's 11 more in the hands of the business development area.</p> <p>12      Q. Would Gena by any chance?</p> <p>13       A. She may have some knowledge. She doesn't 14 work with manufacturers, that's business development. 15 She talks with them, so she probably has some 16 knowledge, but I don't think she has direct knowledge.</p> <p>17       Q. Sticking with BMS drugs, I have somewhere 18 seen a reference in the materials to the effect that 19 OTN – the people buying BMS drugs through OTN can get 20 a 4 percent discount off of list. What does that 21 mean?</p> <p>22      A. What that means is that we were the premier</p>	124
<p>1     A. A floor price – let's say here is the 2 absolute minimum floor. This is as low as you can go 3 on that particular drug. We may have – see, the 4 thing is remember when I told you before we have 5 terms, we have to take that into consideration, so 6 when we as a distributor are doing pricing with a 7 particular customer there is some negotiation room 8 there.</p> <p>9     Q. So OTN can establish a higher price but not a 10 lower price?</p> <p>11     A. Right.</p> <p>12     Q. That's what floor means?</p> <p>13     A. Right. And if we need a lower price, then we 14 would go to Bristol to negotiate that, so we would go 15 to Bristol for further clarification on whether we can 16 negotiate with a customer, or a set of customers.</p> <p>17     Q. Is that process, the floor price, is it the 18 same for generic drugs for BMS?</p> <p>19     A. Actually I'm not very clear on that. I told 20 you, remember, we have pricing tools and stuff that we 21 have. A lot of that is back end mechanics behind 22 things. So we go in and we know what we can do and we</p>	123	<p>1     distributor for Bristol-Myers Squibb of BMS products, 2 being their, you know, their primary distributor, and 3 if a customer were to buy their BMS, Taxol and 4 Paraplatin, if they are to buy those through us, then 5 they would get the best pricing, and that's where that 6 4 percent came if they bought it through OTN.</p> <p>7     Q. And 4 percent off list, is that a reference 8 to BMS's list price?</p> <p>9     A. Yes, to the best of my knowledge.</p> <p>10     Q. Does OTN offer rebates to customers?</p> <p>11     A. Yes. The rebates that we have offered – 12 currently how we do it, our rebate structure is a 13 little bit different. It has to do with people 14 committing. We talked about if they like one vendor, 15 we will reward that behavior, and that's kind of a 16 distributor thing. It's very common in our industry, 17 is to say if you commit to a certain amount of drugs 18 with us you will receive a quarter percent rebate on 19 that, or a 1 percent rebate. Its program driven. 20 Those rebates are program driven.</p> <p>21     The rebates sometimes are up front 22 discounts. If a customer says we really want this up</p>	125

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<p style="text-align: right;">126</p> <p>1 front, we will do that, but for the most part rebates 2 are paid out like a quarter later, or a couple 3 quarters later, depending on the program. 4 Q. Because you are on a quarter lag basis? 5 A. It depends on the program. It varies. 6 Q. Who is responsible for tracking rebates 7 within OTN? Someone in finance? 8 A. Tracking rebates? Again, I think it has 9 probably changed over time, different people, what 10 their title responsibilities are and that. 11 Predominantly I would say its sales operations that 12 probably does the tracking of it, so they will have a 13 list of customers and they will track it, but it then 14 actually goes to finance to be paid out. 15 Q. Do you know if finance has a system that 16 historically reports rebates paid by customer? 17 A. Probably the easiest way to answer that is 18 each customer has the ability to see their rebates 19 because we have that Lynx To OTN and there is a 20 finance tab where they can see what credits they 21 have. 22 So the rebates are usually issued as a</p>	<p style="text-align: right;">128</p> <p>1 Q. Other than rebates, what types of 2 consideration would OTN actually pay customers as 3 opposed to discounts off product? Are there other 4 forms of actual payments made? 5 A. Where we usually -- if a manufacturer has a 6 rebate program, sometimes that will come through the 7 distributor, so if they had a rebate program, and they 8 are paying out on that rebate program in either drug 9 or dollars, that many times would come through our 10 system so you would see it that way. 11 Q. I'm confused. 12 A. Other manufacturer, other manufacturer. 13 Sorry. 14 Q. Are you saying sometimes a rebate payment for 15 a manufacturer can come through OTN to the end client? 16 A. Yes. So that would show up as like a payment 17 to a client. 18 Another way, another payment that you might 19 see would be we have with the Lynx systems, we have 20 people that are reference sites, and if they do 21 demonstrations, so if we are demoing somebody and we 22 send a customer, that's pretty common with hardware,</p>
<p style="text-align: right;">127</p> <p>1 credit, and then there will be a header that calls out 2 the name of the program and what their credit is for. 3 I can speak to the customer side of it. My assumption 4 would be that there is some kind of tracking 5 mechanism, obviously, if they record out that way. I 6 don't know what system they use or how they do it. 7 (Discussion off the record.) 8 Q. Are you familiar with the term admin fees, 9 administration fees? 10 A. Yes. 11 Q. Does OTN pay any administration fees to any 12 customers? 13 A. Does OTN pay administration fees? I'm trying 14 to think if that word is used. 15 Probably like within state societies if we 16 are within a bid, but I don't know if admin fee is the 17 word they used. Admin fee usually refers to GPOs and 18 what a manufacturer pays a GPO for administrative 19 contracts. So that word in OTN isn't familiar to me. 20 Q. So OTN doesn't pay -- 21 A. To the best of my knowledge in my world and 22 with what I do, no.</p>	<p style="text-align: right;">129</p> <p>1 you want to go see it, we might pay them for their 2 time. So they are set up where they get a minimal fee 3 for their time, and it might be, I don't know, it's 4 not very much, it's like \$150 or something, but they 5 might get paid for that. That's something that you 6 might see. Most of our stuff is through discount and 7 terms. 8 Q. The Lynx system, is that something different 9 from Pyxis? 10 A. Pyxis? 11 Q. Pyxis. 12 A. You want me to explain to you how those two 13 words come together? 14 Q. Yes, correct. 15 A. Pyxis is the actual manufacturer of the 16 hardware machinery, and OTN buys -- it's like an OEM. 17 We buy it from Pyxis Corporation, and then we give it 18 our own name which we call the Lynx system. There is 19 a paw print on the window. That's kind of our 20 trademark of that system. That's what we call it. 21 Q. Does the system actually dispense the drug? 22 A. Physically it doesn't pop it out, no. It is</p>

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<p>1    a dispensing system, an inventory system. It doesn't      2    actually dispense it like a vending machine.      3    Q. Let's take a lunch break.      4    (Lunch recess taken at 12:35 p.m.)</p> <p>5</p> <p>6                    AFTERNOON SESSION</p> <p>7</p> <p>8                    1:40 p.m.</p> <p>9                    EXAMINATION (CONTINUED)</p> <p>10      (Marked Deposition Exhibit Peterson 006,      11      Exhibit Peterson 007, Exhibit Peterson 008.)</p> <p>12      Q. (By Mr. Matt) Ms. Peterson, we were beginning      13      to discuss Lynx before we broke for lunch, and I'm      14      going to ask you some more detailed questions about      15      it.</p> <p>16      Lynx is the OTN trade name on the Pyxis      17      system?</p> <p>18      A. Pyxis, yes.</p> <p>19      Q. Why don't you give us a 40,000 foot overview      20      of what Lynx does.</p> <p>21      A. When I refer to Lynx I'm talking about Pyxis      22      as well, is a hardware cabinet, so it's a hardware</p>	<p>130</p> <p>1    A. Actually that's a fairly broad question. It      2    needs to be narrowed down a little bit because it does      3    a lot more than that.</p> <p>4    Q. Let me use an example of a patient who is      5    being administered Taxol in one day. The nurse in the      6    clinic then inputs information into Lynx regarding the      7    administration of that drug. Correct?</p> <p>8    A. Yes.</p> <p>9    Q. What information is input?</p> <p>10     A. By the nurse, the date that the patient has      11      gotten it, she will tell the system how much she has      12      given that patient in milligrams, or in units.</p> <p>13     Q. How does the Lynx software identify the      14      actual drug?</p> <p>15     A. The Lynx software doesn't identify the drug.</p> <p>16     Q. The nurse has to input the name of the drug,      17      correct?</p> <p>18     A. Right, she has to identify what she is taking      19      out.</p> <p>20     Q. Is that typically captured by drug name or by      21      J code or by national type code?</p> <p>22     A. The system itself -- you are asking what the</p>
<p>1    cabinet with software attached to it that is for      2    managing drug inventory. It's a drug dispensing      3    system.</p> <p>4    Q. So when you say "drug inventory management,"      5    does it automatically order a drug if it's at a      6    certain time frame?</p> <p>7    A. It has the ability to do that if a customer      8    wants it to.</p> <p>9    Q. What else does Lynx do?</p> <p>10     A. It also has the ability to capture the      11      different -- it actually collects the specific patient      12      treatments that were done in a given day, and then it      13      collects those treatments via what drugs were given,      14      what procedures were done, which has been inputted by      15      the nurse, and then that information is sent out via a      16      report so that for a particular patient they know what      17      has been given to that patient for that day.</p> <p>18     Q. Is that by NDC number? Is it tracked by NDC      19      number?</p> <p>20     A. What are you asking?</p> <p>21     Q. The drug that is dispensed. Actually the      22      drug that is administered.</p>	<p>131</p> <p>1    nurse does. The nurse will go up and say -- there      2    will be a list like a menu, and she will pick it, so      3    you have asked Taxol, she will pick Taxol and the size      4    she was taking out.</p> <p>5    Q. Is there a way to track which manufacturer      6    produced that, or are you using Taxol specifically as      7    --</p> <p>8    A. That would be up to the customer to decide      9    how the name was displayed.</p> <p>10     Q. That's part of the inventory management      11      system?</p> <p>12     A. Yes, it is.</p> <p>13     Q. Does it also convey information on drug      14      pricing, "it" meaning Lynx?</p> <p>15     A. Does it contain it? You are implying that      16      it's an automatic thing. You are asking does it      17      contain, so that's implying.</p> <p>18     Q. To be more specific, is there a screen that      19      displays drug pricing information within Lynx?</p> <p>20     A. There is a screen that displays it, but it      21      only displays that information if the customer enters      22      it into the system.</p>

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<p>1     Q. So the customer cannot use Lynx to look up 2     OTN pricing? 3       A. They can use it to look it up, but they have 4     to input it into the system. 5       MR. TRETTER: It's not like Lynx To OTN which 6     is an active web site. You are talking about two 7     different things. 8       MR. MATT: Thank you. 9       MR. TRETTER: Lynx, when she is talking about 10   Lynx, she is talking about a machine that looks like a 11   vending machine. 12      Q. Not the web site. 13      A. Right. 14      Q. Lynx To OTN, is that also referred to as OTN 15   On Line? 16      A. That was its old name, and it was changed to 17   Lynx To OTN a couple years ago. 18      Q. Let's stick with the Lynx machine itself. 19       Do customers use Lynx for any other purpose 20   other than managing drug inventory and automatic 21   ordering? 22      A. Yes.</p>	<p>134</p> <p>1     Q. Whether that be Medicare or a private 2     insurer? 3       A. It doesn't matter. They are simply 4     collecting the information of what they have done for 5     the day, and they will put it onto that, and then they 6     give that to the billing people. 7       Q. So Lynx itself does not create bills? 8       A. Lynx itself does not create bills. Yes, 9     that's true. I guess the answer would be no, it does 10   not create bills. 11      Q. Thank you. 12       Look at Exhibit Peterson 008, please. Exhibit 13   Peterson 008, for the record, contains BMS/AWP 000096834 14   to 96869. I do not believe this to be a document that was 15   provided to us out of your files, based on the production 16   numbers. 17       I have a specific question about this. Draw 18   your attention to page 11, which is also Bates No. 19   96845. For the record, this document is titled 20   Oncology Therapeutics Network Lynx System Proposal, 21   California Oncology Consortium, July 4, 1999. This 22   page deals with on site report generation. If you</p>
<p>1     Q. What other reasons can a customer make of 2     Lynx? 3       A. Specifically to the nurses, because they are 4     the majority of the people that will use the machine, 5     the nurse will besides doing the drug inventory on the 6     machine will also get a report out of the machine that 7     tells them, like I told you before, the drugs that 8     were given to a particular patient and the procedure, 9     so it will be a list they ask the machine for. Then 10   they take that and they can use that when they are 11   doing their super bill, or charge slip. 12      Q. What is that? 13      A. The super bill or the charge slip is a 14   document that the nurses use to chart their activities 15   for a particular patient for that day on. So the Lynx 16   machines report that comes out, they can attach that 17   to that report, that little slip of paper that they 18   have, so that they don't have to write it all down 19   again. 20      Q. Is this for purposes of billing whoever is 21   going to pay for the procedure? 22      A. Yes.</p>	<p>135</p> <p>1     look down about two-thirds of the way there is a 2     paragraph on costs. Would you read that for us, 3     please? 4       A. "Cost reports are used to determine the cost 5     of treating patients based on items removed from the 6     Lynx. They provide detailed billing information such 7     as item NCD number, billing code, J code, billable 8     units, acquisition and AWP costs." 9       MR. TRETTER: It says "and acquisition and 10   AWP costs – and and." 11      Q. The acquisition and AWP costs, is that 12   information that is input? 13      A. That information is input by the practice. 14      Q. Because we are referring to Lynx and not Lynx 15   To OTN? 16      A. That is correct. 17      Q. Why would the practice, if you know, want to 18   input that information? Referring to acquisition and 19   AWP costs. 20      A. In my opinion, or their opinion? 21      Q. In your opinion, based on your experience. 22      A. As this says, they are putting all this</p>

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<p>1 information into the Lynx system. They do that for      2 themselves so that they can run their business. It's      3 actually one place where they can input all the      4 different types of information that they have into one      5 database to create a report for themselves.</p> <p>6 Q. Why would acquisition and AWP costs be      7 relevant to a practice?</p> <p>8 A. It depends on the practice. I couldn't make      9 a general statement on that. It's really dependent      10 from practice to practice.</p> <p>11 Q. The acquisition costs are going to refer to      12 what the practice pays for a drug. Is that correct?</p> <p>13 A. That is correct.</p> <p>14 Q. And AWP costs are going to play some role in      15 what the practice gets reimbursed?</p> <p>16 A. It depends on the practice.</p> <p>17 Q. Right.</p> <p>18 A. It depends on their payers. There are a lot      19 of variables. I can't make an assumption or make a      20 statement toward that.</p> <p>21 Q. But you can if its Medicare, right, prior to      22 2004?</p>	<p>138</p> <p>1 information, and it can be used to create a super bill      2 that can be used in a clinic's billing process at some      3 point.</p> <p>4 Are there any other capabilities of the Lynx      5 system that you would like customers to be aware of?</p> <p>6 A. I would just say a very general statement      7 would be that it has reporting capabilities, so they      8 can pull reports off of it, but that is something that      9 they would actually go in and create themselves out of      10 a subset of data. So it's like any other software.</p> <p>11 Q. Is it menu generated? They can click on a      12 certain report?</p> <p>13 A. There are reports that they can create, so      14 when they install the system if they want to set up a      15 series of reports that they can do, and then there is      16 a set of reports that are just automatic, ones that      17 are standard reports that practices get like an      18 inventory report. There are many different standard      19 reports that are on there, and then they can customize      20 their own reports.</p> <p>21 Q. Off the top of your head, what other type of      22 reports are there that can be generated by using Lynx?</p>
<p>1 A. Prior to 2005.</p> <p>2 Q. Prior to 2005, thank you.</p> <p>3 Because the reimbursement formula was based      4 on AWP, correct?</p> <p>5 A. Yes.</p> <p>6 Q. You testified earlier some insurers reimburse      7 based on AWP, correct?</p> <p>8 A. Its variable.</p> <p>9 Q. Is that a yes or a no?</p> <p>10 A. Some insurers, yes.</p> <p>11 Q. That's all the questions that I have on that      12 document.</p> <p>13 Is there anything that the Lynx system is      14 capable of doing for a customer that we have not      15 discussed?</p> <p>16 A. That's very broad.</p> <p>17 Q. Purposely so.</p> <p>18 A. Can you ask a more detailed question?</p> <p>19 Q. You've kind of described they can do      20 automatic ordering, it can capture specific patient      21 treatments, there are screen displays that can display      22 pricing information if a customer inputs that</p>	<p>139</p> <p>1 A. A min and max level would be another name of      2 a report. A par level report.</p> <p>3 Q. Do any others come to mind?</p> <p>4 A. There is a report, I'm trying to think of the      5 name of it, it's like a demographic report.</p> <p>6 Q. What does min max mean?</p> <p>7 A. It has to do with inventory, so the minimum      8 of a particular item that is on hand at any time, or a      9 maximum, so it will set minimum and maximum levels for      10 each of the items that are in the machine to manage      11 the inventory.</p> <p>12 Q. And par level?</p> <p>13 A. Par level is where they will see for any      14 particular drug where they want to set a reorder at,      15 so that's their par level. So if they say, you know,      16 when it falls to three items I want it to call up a      17 report that tells me I need to order that drug. It's      18 all in the inventory management part of it.</p> <p>19 Q. And the super bill, is that actually the name      20 of a report?</p> <p>21 A. No, that's actually an office based oncology      22 term. Some practices use it and some don't.</p>

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<p>1       Q. Any other reports that you can think of that 2 Lynx can generate? 3       A. The super bill report is not a report 4 generated by the Lynx. 5       Not any that are on the top of my head. 6       Q. Let's move to Lynx To OTN. It was formerly 7 called OTN On Line, correct? 8       A. Yes. 9       Q. Before I go there, the Lynx system itself, do 10 most customers use Lynx, most of OTN's customers? 11      A. No. It's a percentage. 12      Q. Do you have an estimate of what percentage? 13      A. I don't know what percent. No, I don't know 14 a percentage. 15      Q. More than half, less than half? 16      A. Less than half. 17      Q. Do you see a certain theme develop in Lynx 18 use, for instance do large clients use Lynx? Is there 19 a pattern of usage that you can link to volume of 20 purchases through OTN? 21      A. Probably the most common thread would be that 22 its predominantly in the office based oncology</p>	142	<p>1       data will be shared and returned for waiving the fee, 2 are there other circumstances under which OTN would 3 waive the fee for Lynx? 4       A. No. 5       Q. Lynx To OTN, please describe generally what 6 that is. What is Lynx To OTN? 7       A. Its OTN's customer facing web site. It is 8 the web site for our customers. 9       Q. Do all customers use Lynx To OTN? 10      A. No. 11      Q. Why would customers not use it? 12      A. They don't have internet, or they don't have 13 a computer. 14      Q. What percentage of customers in your region 15 don't use Lynx To OTN? 16      A. I don't have a percentage. 17      Q. Would it be less than half? 18      A. That do not? Yes. 19      MR. TRETTER: When you say use it, it's a web 20 site, so I object to the form of the question. 21      Q. Why do customers use Lynx To OTN? 22      A. Again, that's very broad. There are many</p>	144
<p>1 setting, and "no" would be the answer to whether its 2 large or small. Its in all sizes. 3       Another common thing would be somebody that 4 is interested in technology and improving efficiency, 5 that's the type of practice that would want it. 6       Q. Does Western Washington Oncology use Lynx, do 7 you know? 8       A. Yes, they do. 9       Q. I think you testified earlier sometimes that 10 OTN charges a fee for Lynx use. Correct? 11      A. Yes. 12      Q. Are there instances sometimes in which it 13 doesn't charge a fee? 14      A. Yes. 15      Q. Those are limited to demonstration sites. 16      A. What do you mean by "demonstration"?</p> <p>17      Q. Reference sites: 18      MR. TRETTER: I think what she testified to 19 before was that sometimes they have — the contract 20 allows for an exchange of data in return for the 21 waiving of the normal fee. 22      Q. Other than that kind of an instance in which</p>	143	<p>1 uses for OTN. 2       Q. I would like you to describe them for me, 3 please. I've never used it. 4       A. I will put it in maybe three categories, 5 minimal use, which someone who is just literally going 6 onto the web site, they view it because it's a web 7 site. Anyone can view it. Then somebody who probably 8 uses it on a regular basis. They would be using the 9 web site to go in and review customer specific 10 information from Lynx, like they can check their 11 invoices on line. 12      They can get, I forgot the name of that, what 13 are the things that — remittance slips. They can 14 look up their purchase history, so how much of an any 15 particular drawing they bought in any given month. 16      They can go in and order their drugs on 17 line. They can view a catalog on line, so if they 18 want to look up a particular drug they can do that. 19      They can look up their credits. I said "invoices," 20 but they can also look up credits. 21      There are financial parts of the web site, 22 and then there is a reporting side of the web site</p>	145

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<p>1 which is where the purchase history report would be.      2 There are several different like practice management      3 reports that they can get, so there is that report      4 section, and those are specific to them as a customer.      5 Then there is another section of the web site      6 which are a lot of the links, so in other words --      7 L-I-N-K-S, links where like any kind of web site you      8 want to be that central depository for them, be able      9 to get some information, like you may go out to a link      10 to Asco or a link to another web site that's out there      11 for their use.</p> <p>12 Q. What other things can you think of that are      13 available through Lynx To OTN web site?</p> <p>14 MR. TRETTER: Today?</p> <p>15 MR. MATT: Today.</p> <p>16 THE WITNESS: Today? There is a clinical      17 section where they can go in and look up, there is      18 like a cancer dictionary so if they want to look up      19 common terms for themselves to be able to get a      20 definition of certain terms. They can go to the FDA      21 web site to see about new drugs, or if they want to      22 look up -- there is a link to a web site, and I</p>	<p>146</p> <p>1 there, and then depending on the time, as it began,      2 there was an AWP report which just was simply a list      3 for customers, and they had asked us for that report      4 that would give the drugs that they purchased from      5 OTN, and it would list out what the current AWP was.      6 Q. For all drugs that could be purchased, or      7 just the drugs that they did purchase?</p> <p>8 A. The way it was done is just because the way      9 the system works. If they purchased the drug from OTN      10 it came up on that list, and then the AWP was listed,      11 and it was just a single report, and that's all that      12 showed was the AWP on that particular drug. It was      13 one AWP, whatever that drug, or whatever that NDC was.</p> <p>14 Q. Was this called the AWP report?</p> <p>15 A. Yes.</p> <p>16 Q. Is that currently available through Lynx To      17 OTN?</p> <p>18 A. No, that has changed because customers aren't      19 asking for AWP anymore.</p> <p>20 Q. When did that change?</p> <p>21 A. I don't know the exact date, but I would say      22 in the beginning of 2005.</p>
<p>1 believe it's still a link that is there called Needy      2 Meds.com which is something that allows a customer to      3 go in and look at a particular drug and if they need      4 tips on when they are submitting claims and that.      5 It's an independent web site that does things for      6 them. A lot of it is just reference material.</p> <p>7 Q. So the Lynx section is going to have a list      8 of web site addresses that a customer can click to and      9 send to or they are sent to another web site?</p> <p>10 A. Yes.</p> <p>11 Q. The reporting capability, you referenced a      12 purchase history report, and generally practice      13 management reports. What kind of practice management      14 reports are available through Lynx To OTN?</p> <p>15 A. Again, I would have to go back and say it      16 depends on the date. If we are talking today or we      17 are talking in the past, because it's a web site and      18 things change and are updated.</p> <p>19 Q. Historically what was available, and then we      20 will move into the present.</p> <p>21 A. Purchase history has -- to my knowledge since      22 Lynx To OTN hasn't been around, hasn't always been</p>	<p>147</p> <p>149</p> <p>1 Q. About the time Medicare changed its      2 reimbursement formula, right?</p> <p>3 A. Yes.</p> <p>4 Q. What was the source of the AWPs that were      5 listed on that report?</p> <p>6 A. The AWP report was from Red Book.</p> <p>7 Q. So did OTN have a report with Red Book?</p> <p>8 A. I can't answer that question. I don't know.</p> <p>9 Q. As far as you know were the AWPs always      10 derived from Red Book?</p> <p>11 A. The report itself at the top says prices from      12 Red Book, and it will have the date that it was      13 updated.</p> <p>14 Q. So to your knowledge there wasn't any other      15 pricing source that was ever displayed?</p> <p>16 A. To my knowledge, no, on that report.</p> <p>17 Q. And that report was available when you first      18 began working for OTN?</p> <p>19 A. I don't remember when it started.</p> <p>20 Q. Do you remember when Lynx To OTN started?</p> <p>21 A. I want to say around 2001 sometime, around      22 2001, when it went from OTN On Line to Lynx To OTN.</p>

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<p>1     Q. Do you know when OTN On Line started?</p> <p>2     A. No.</p> <p>3     Q. It was just a name change, right?</p> <p>4     A. Yes.</p> <p>5     Q. Back to historical reporting that's</p> <p>6     available, we have talked about a purchase history</p> <p>7     report, an AWP report. Any other reports that were</p> <p>8     available through Lynx To OTN?</p> <p>9     A. The AWP report changed at some point in time</p> <p>10    to an AWP price report. By customers' recommendations</p> <p>11    we do upgrades to reports, and at some point in time,</p> <p>12    and I can't remember the exact date of it, the</p> <p>13    customers had requested that we change it so that they</p> <p>14    actually can see by billing unit on there, and so we</p> <p>15    did add that at one point in time, so you can see the</p> <p>16    AWP and you can see what a billing unit equals.</p> <p>17    Q. I'm not sure that I have an example of this.</p> <p>18    I might. I will look for it.</p> <p>19    You say billing unit, to add a billing unit</p> <p>20    amount. What does that mean?</p> <p>21    A. A billing unit is when they bill a particular</p> <p>22    drug, what one billing unit equals, so it might be in</p>	<p>150</p> <p>1     as well. Whatever came from Red Book is what we put</p> <p>2     on there.</p> <p>3     Q. You mentioned that customers wanted the</p> <p>4     billing unit information displayed.</p> <p>5     A. Yes.</p> <p>6     Q. Why did they want that?</p> <p>7     A. When they are doing their business they would</p> <p>8     ask for things that were particular to them, and any</p> <p>9     kind of reference information that we could provide to</p> <p>10    them to make their life easier, that's what they ask</p> <p>11    for, and if it was legally something we could do we</p> <p>12    would try to provide it to them.</p> <p>13    Q. In your experience why were they telling</p> <p>14    you that they wanted it?</p> <p>15    A. Because that's how they billed for their</p> <p>16    drugs, was by a billing unit. That's a method for</p> <p>17    billing.</p> <p>18    Q. So was this a matter of providing added</p> <p>19    convenience to the customer, they could look it up and</p> <p>20    see it on one screen?</p> <p>21    A. Yes.</p> <p>22    To help explain a little bit, is it would be</p>
<p>151</p> <p>1     milligrams or grams or milliliters or whatever it</p> <p>2     would be.</p> <p>3     MR. TRETTER: It's a CMS defined figure.</p> <p>4     Q. So it would be per billing unit – the AWP</p> <p>5     price report would show for each billing unit the</p> <p>6     AWP? No? Could you be more specific?</p> <p>7     A. No. You would have a line item drug, which</p> <p>8     is in the NDC, which would have an AWP which came from</p> <p>9     Red Book, and then you would have what a billing unit</p> <p>10    equals. That comes from CMS.</p> <p>11    So one billing unit equivalent, so what that</p> <p>12    equals, so is it 10, is it 15, is it 20?</p> <p>13    Q. Did the AWP price report also display the</p> <p>14    cost at which the practice can purchase that drug from</p> <p>15    OTN?</p> <p>16    A. When it was AWP price report, no. It was</p> <p>17    just the AWP and the billing unit when it went to the</p> <p>18    upgraded one.</p> <p>19    Q. What about the AWP report?</p> <p>20    A. When we had that it just had like AWP, and I</p> <p>21    can't remember. It's been a long time, so I can't</p> <p>22    remember exactly. It may have been a J code on there</p>	<p>153</p> <p>1     like taking – instead of giving somebody the yellow</p> <p>2     pages from Seattle, they would give them the yellow</p> <p>3     pages from Roseburg, Oregon. It was the difference</p> <p>4     between having to have a customer look at something</p> <p>5     this thick, or actually having it defined to their</p> <p>6     world. You know what I'm saying, when I'm saying it's</p> <p>7     just the drugs they bought? If they had to look in a</p> <p>8     book this big it would have taken them a long time to</p> <p>9     do it. So it's for convenience, like you said.</p> <p>10    Q. Oh, I see. So they wouldn't have to go leaf</p> <p>11    through information regarding drugs that they don't</p> <p>12    utilize in their practice?</p> <p>13    A. Yes.</p> <p>14    Q. Does the system determine which drugs they</p> <p>15    utilize in their practice based on purchase records?</p> <p>16    A. I don't understand what you are saying.</p> <p>17    Q. When a customer signs on to Lynx To OTN, how</p> <p>18    does Lynx To OTN determine what drugs to display in</p> <p>19    the AWP price report?</p> <p>20    A. Like I explained to you before, it's the</p> <p>21    drugs that a customer purchases, so whatever they</p> <p>22    purchased. If they buy one drug from us, one drug</p>

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<p>1        would be displayed. It doesn't come from us, it comes 2        from what their purchasing behavior is. 3        MR. TRETTER: What he is asking, is there 4        some sort of logic in the computer that it knows when 5        somebody signs in that that is what they bought and 6        therefore when they go to the AWP report it will show 7        those drugs? Is there some computer programmer that 8        has done that?</p> <p>9        THE WITNESS: I don't know the answer to 10      that, but I would assume it would reference the 11      purchase history.</p> <p>12      Q. We talked about the AWP report, the AWP price 13      report, the purchase history report.</p> <p>14      What other reports are available through Lynx 15      To OTN?</p> <p>16      A. The other report is another section called 17      Clinical Data Reports, and those are only viewed by 18      practices that have a Lynx machine. So if they have 19      entered data, they have to enter data into the 20      machine, and then that data is collected and is put 21      together as a collective. It's a cumulative amount of 22      data.</p>	<p>154</p> <p>1        obtain those reports? 2        A. No. 3        Q. Does that include the clinical data reports 4        as well? 5        A. Yes. 6        Q. I couldn't just go to Lynx To OTN web site 7        and view reports, you have to have a user made 8        probably, is that correct? 9        A. That's correct. 10      Q. Does that mean you have to register with OTN? 11      A. Yes, you have to register to be able to view 12      the customer web site. 13      MR. TRETTER: Hopefully you can't go to Smith 14      Barney either and look at my account. 15      Q. Other than the AWP price report, which is of 16      relatively recent vintage, are the reports that you 17      have referenced, were they also available through OTN 18      on line? 19      A. I don't know the answer to that. 20      Q. Customers can order drugs through Lynx To 21      OTN, correct? 22      A. Yes.</p>
<p>1        Then there is a series of three reports that 2        would be provided back to the practice. And those 3        data reports then would be on the web site.</p> <p>4        Q. What are the names of some of those reports? 5        A. Total drug utilization, completed regimen 6        report, drug dosing comparison report.</p> <p>7        Q. You can't generate those reports unless you 8        have information input to Lynx by the customer. 9        Correct?</p> <p>10      A. Yes, you can't view them unless you have a 11      Lynx. You have agreed to put that information in, 12      number one, and number two, you actually have to fill 13      out a form to say I want to see it on the web site. 14      Only customers who have asked to see it and want that 15      information to be viewed, then they are able to view 16      it.</p> <p>17      Q. Is the customer charged for Lynx To OTN 18      services?</p> <p>19      A. To view the web site, is what you are asking?</p> <p>20      Q. Correct.</p> <p>21      A. No.</p> <p>22      Q. So those reports, they don't pay extra to</p>	<p>155</p> <p>1        Q. Does Lynx To OTN display a price list? 2        A. I think I need you to be a little more 3        specific. Display a price list? 4        Q. Display, yes. 5        Can a customer access information – can a 6        customer use Lynx To OTN to determine the prices that 7        OTN charges for drugs? 8        MR. TRETTER: Catalog prices, for instance? 9        Would that be an example? 10      Q. What prices can a customer see through Lynx 11      To OTN? 12      A. Okay. They can view the pricing on the drugs 13      that they purchase, so I had referenced that they can 14      go on line and order. So when they go on line to 15      order it comes up with a list of the products that 16      they frequently buy, and if they print that screen 17      that will be a list of their pricing for those 18      particular drugs, so they will see that. 19      If there is a drug that they do not currently 20      purchase from us, and they want to see what the 21      pricing is, they will go to the catalog and pull it up 22      by drug, and it will say what their price is on that</p>

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<p>1     drug.</p> <p>2     Q. What is the screen called for them to view 3     the prices on drugs that they have purchased before?</p> <p>4     A. There is actually not a report or a screen 5     name to view that. Like I said, its in the order 6     screen.</p> <p>7     Q. The price will pop up?</p> <p>8     A. There is a list of drugs they can order with 9     little check boxes, like on a web site, and the drug 10    price is right there.</p> <p>11    Q. Is there a particular name associated with 12    that price? Is it just OTN price, or list price?</p> <p>13    A. The header of the column would say — 14    remember I told you there were terms, so it might say 15    whatever the customer's term is. It will say 1 16    percent, 30-day price, so it will give them their 17    price, if they were exercising the term that they 18    would pay in. Then it would also give an invoice price 19    because you have a percent off invoice. If you pay at 20    30 days you get 1 percent off. It would show two 21    prices, invoice price and the price that they pay at 22    term that they had signed up for.</p>	<p>158</p> <p>1     A. Well, ask the question again. 2     (The record was read back.) 3     THE WITNESS: That's a weird question. 4     Q. If customer A clicks that catalog button and 5     a price is displayed for a certain drug, is that price 6     necessarily the same for customer B when customer B 7     clicks the catalog button?</p> <p>8     A. I know what you are asking. What you are 9     asking is catalog price. Catalog price is the same 10    all the way across the board, catalog prices.</p> <p>11    What I had told you is when someone goes into 12    a customer specific site and asks for their price for 13    a particular catalog item it will give them their 14    customer specific price. So that question had two 15    questions to it, because there is such a thing as 16    catalog price, but when they are looking in the 17    catalog they are looking for a drug and they want to 18    know what their price is, and that's what it is going 19    to tell them, what their negotiated price on that drug 20    is.</p> <p>21    Q. Where does one access catalog prices that are 22    the same for everyone?</p>
<p>159</p> <p>1     Q. If it is a drug that the customer had not 2     purchased from OTN before they would have to access a 3     catalog on the web site, correct?</p> <p>4     A. Yes.</p> <p>5     Q. Is there a catalog tab or something for them 6     to click on?</p> <p>7     A. There are two places. On the order screen 8     there is an open box where they would type in the 9     name. There is a button that says "catalog" as well 10    where they could go to the catalog.</p> <p>11    Q. The prices that one client -- the prices that 12    are displayed that are on Lynx To OTN for one client 13    aren't necessarily the same as the prices displayed 14    for another client. Correct?</p> <p>15    A. Yes, that's correct.</p> <p>16    Q. Is the same true for the catalog, the 17    so-called catalog price, that it can differ by 18    customer?</p> <p>19    A. You are actually asking a couple questions in 20    that question. You need to get more specific.</p> <p>21    Q. Tell me the trouble you are having with the 22    question and I will try to.</p>	<p>161</p> <p>1     A. If someone wanted to get a catalog price on 2     something, they would need to call their OTN rep and 3     have them get the catalog price. It's not something 4     that they are going to go and see on the web site.</p> <p>5     MR. TRETTER: Now I'm confused. When you say 6     "catalog," are you talking about the one price for 7     all? There is something that's a public price, let's 8     say, the catalog price which is the same for 9     everybody. Yes?</p> <p>10    THE WITNESS: Yes. The thing is as a 11    distributor when you are working with a customer 12    specific, they want to know what their price is. 13    That's all they care. They want to know what their 14    price is. We have a catalog price on everything, so 15    that's how we set our pricing.</p> <p>16    Catalog is high, that's the top end, and then 17    there is customer specific pricing. We are confusing 18    the word "catalog" because I'm talking about a catalog 19    like would be a book that would have everything in 20    it.</p> <p>21    So when I say if you are going to search for 22    a drug, you are going to go to our catalog to look for</p>

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<p>1    that drug, and then it will give the customer a 2    specific price when they look up that drug in the 3    catalog. It's not going to give them catalog price. 4    Q. The definition of catalog price depends on 5    how you are accessing it? If you are going to access 6    the catalog as a client who has logged on to Lynx To 7    OTN, the catalog price button you push is going to 8    give you a customer specific price, though?</p> <p>9    A. That is correct.</p> <p>10   Q. Got it.</p> <p>11   A. That was tough.</p> <p>12   Q. If a customer does not use Lynx To OTN to 13   place their orders, how do they place orders?</p> <p>14   A. They have the ability to place orders by 15   calling in on the telephone and talking to a customer 16   service representative who will take their order over 17   the phone. They can also, if they have a list of 18   products that they routinely buy, some customers still 19   fax in their order. So fax, phone, and the web site.</p> <p>20   Q. If they call OTN they call an inside sales 21   rep?</p> <p>22   A. They call a customer service rep, a CSR.</p>	<p>162</p> <p>1    seems so much more efficient to me.</p> <p>2    A. If varies. I think that the percentages vary 3    probably day-to-day, depending on which customers are 4    calling in, because it's very customer specific on 5    what their access is.</p> <p>6    Q. Do all of the key accounts use Lynx To OTN?</p> <p>7    A. Again, that's a question that I have no data 8    on.</p> <p>9    Q. Are there key accounts that you are aware of 10   that don't use Lynx To OTN?</p> <p>11   A. I would say they probably all touch it. How 12   much they use it, it varies. Like I said before, the 13   use of it varies. It depends on what their title is 14   and what they would use it for.</p> <p>15   Q. Does OTN like all of its customers to use a 16   Lynx To OTN?</p> <p>17   A. Again, that's very subjective. The thing is 18   we provide choices to our customers, and like anything 19   else, that choice is up to the customers. We don't 20   particularly drive our customer base toward one or the 21   other. It's a choice.</p> <p>22   Q. I thought I saw earlier in a document that we</p>
<p>163</p> <p>1    Q. And if they fax an order in, to whom is the 2    order faxed?</p> <p>3    A. It goes into the customer care department 4    where the CSRs work.</p> <p>5    Q. And if a customer does not use Lynx To OTN, 6    how does that customer know what he is paying for 7    drugs?</p> <p>8    A. They will ask the customer service rep what 9    they pay. The customer service rep would be like if 10   they are on Lynx To OTN, they will see the same 11   specific pricing.</p> <p>12   Q. It will be the customer specific pricing?</p> <p>13   A. Customer specific pricing.</p> <p>14   Q. Do most of your customers in your region use 15   Lynx To OTN for their ordering?</p> <p>16   A. That's a very subjective question. Most? 17   Define "most."</p> <p>18   Q. More than half.</p> <p>19   A. I do not have numbers on that. I couldn't 20   tell you off the top of my head. I don't know.</p> <p>21   Q. I'm trying to figure out how prevalent the 22   use of the phone is as opposed to a computer which</p>	<p>165</p> <p>1    may have gone over that it was a sales goal to get 2    people to use Lynx To OTN. Correct?</p> <p>3    A. Yes, it was, but again, what I would like to 4    say is if you look at documents, it depends on the 5    date of the document.</p> <p>6    When Lynx To OTN was first started we 7    obviously wanted people to start using the web site to 8    order. So there was a lot of promotion because it was 9    a new thing and we had to educate our customers to 10   it. That was in the past. We don't have a marketing 11   thesis that states that anymore.</p> <p>12   Q. Why is that?</p> <p>13   A. They all know about the web site. It's 14   something that on every sales call our reps make sure 15   they know what their methods of communication with the 16   company are. Its widely known, so we don't have to 17   talk about it that much anymore. They have made their 18   choice.</p> <p>19   Q. Do your competitors utilize a similar web 20   based ordering utility?</p> <p>21   A. They have a web site. My guess is -- I've 22   never been on to their web site to see if they do, so</p>

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<p>166</p> <p>1 I don't know.</p> <p>2 Q. The document that has been marked Exhibit Peterson 3 006 to your deposition is Bates No. BMS/AWP.00148633 all 4 the way up to 86284. For the record, what is this 5 document?</p> <p>6 A. Actually I would have to spend some time 7 going through every single page, but this looks like a 8 whole compilation of a lot of documents. It's not one 9 single document. It's a lot of different things.</p> <p>10 It's not one single document of anything, it's just a 11 whole bunch of stuff that someone put together in a 12 pile.</p> <p>13 Q. I will represent that this was represented to 14 me by your attorneys as being produced from your 15 files. Do you recognize this as being produced from 16 your files?</p> <p>17 A. Yes.</p> <p>18 Q. Is this a notebook that's been photocopied?</p> <p>19 A. Not all of this. Like I said, this is a 20 bunch of different things that someone put altogether 21 into one.</p> <p>22 Q. Is the cover page a copy of a notebook that</p>	<p>168</p> <p>1 (Discussion off the record.)</p> <p>2 MR. TRETTER: While we were off the record I 3 reminded the witness, there is another way for 4 customers to order product and that is --</p> <p>5 THE WITNESS: -- through the Lynx auto order 6 function, which we were talking about part levels in 7 that.</p> <p>8 MR. MATT: You did discuss that. That was 9 clear. Thanks.</p> <p>10 THE WITNESS: I was going to bring it up and 11 I thought no, I said it already.</p> <p>12 This is really hard for me to figure out 13 where the beginning and end is. This came from 14 different books.</p> <p>15 Q. Let me ask you about specific pages and maybe 16 we can approach it that way.</p> <p>17 A. That's probably better.</p> <p>18 Q. Page 6072, referring to the Bates number, it 19 says "AWP price report." Are we looking at a screen 20 shot of Lynx To OTN?</p> <p>21 A. Yes. Again, from a couple years ago.</p> <p>22 Q. On this screen can you describe the</p>
<p>167</p> <p>1 you have?</p> <p>2 A. I don't recognize it. I think something got 3 missed in the black there. I don't know what it is.</p> <p>4 Q. Do you have Lynx To OTN information contained 5 in a binder in your office?</p> <p>6 A. Yes.</p> <p>7 Q. And that was provided to your attorneys, 8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Is at least some of that material 11 recognizable in this exhibit?</p> <p>12 A. Yes.</p> <p>13 Q. Are you able to determine what material is in 14 that binder and what material is not in that binder?</p> <p>15 A. Not without going through every page.</p> <p>16 One thing I will comment on, of the portion 17 of this binder which was an actual binder of Lynx To 18 OTN, this was something that was printed out by me 19 several years ago when I was a rep. So it is all 20 dated materials that's in here, at least on the Lynx To OTN one. It was still in my hard copy possession, 22 that's why I sent it to you.</p>	<p>169</p> <p>1 information that is displayed?</p> <p>2 A. On the screen of the AWP price report, this 3 is where a customer would go and make some 4 selections. The first one says "select AWP 5 modifier." That is where they can say on the next 6 report, what will it multiply, you know, add or 7 subtract from AWP as a modifier. They can either 8 select minus 10, minus five, zero, five or 10 or 9 other, and if they select "other" they put that amount 10 in the box.</p> <p>11 The second one is to show prices with current 12 payment terms, and then show the print version, so 13 they can make some selections, and then they select a 14 site and run the report.</p> <p>15 Q. Is the next page then an example of the AWP 16 price report itself?</p> <p>17 A. Yes, as it looked whatever date this was 18 generated.</p> <p>19 Q. Please describe for the record what 20 information is displayed on this record.</p> <p>21 A. The very top has the OTN demonstration site. 22 This is actually just a demo site, so it's not an</p>

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<p>1 actual customer live site, this is a demo. It has AWP      2 last updated on, so that will actually be that      3 reference to the update from Red Book. Prices      4 effective, and it has a date of when the prices that      5 were listed here are effective, and what payment term      6 the current customer is on.</p> <p>7 There is a category, one column that listed      8 the NDC, one that lists the product plus whatever      9 formula it is, so that is solution or injection. The      10 strength, unit size, what the OTN dispensing unit      11 price is.</p> <p>12 Q. Specific to that client, correct?</p> <p>13 A. Specific to that client, with their term,      14 because in this instance they selected as an option      15 "show OTN price with payment terms," so that's why you      16 see its 2 percent direct debit. Its minus 2 percent,      17 so its giving the price with their term.</p> <p>18 In this case they also selected the minus      19 five as their modifier for AWP, so it's going to take      20 and calculate out what AWP minus 5 percent is and put      21 that in that column.</p> <p>22 It then has the HCPCS code, and the last</p>	<p>170</p> <p>1 they have to manually input a number?      2 A. Yes, plus or minus or whatever. So the AWP      3 column will reflect whatever they have entered in the      4 first selection, and then the OTN dispensing unit      5 price will show the terms if they clicked on the radio      6 button to say I want my price showing with my terms.</p> <p>7 Q. Radio button?</p> <p>8 A. This is a radio button. See those little      9 circles. Those are called radio buttons.</p> <p>10 Q. As in R-A-D-I-O?</p> <p>11 A. As in R-A-D-I-O.</p> <p>12 Q. These two pages that we are looking at right      13 now, were they contained in your binder?</p> <p>14 A. These two pages came from the Lynx To OTN      15 binder, because they are screen shots from Lynx To      16 OTN.</p> <p>17 Q. I notice it says "last updated 2001" in this      18 example.</p> <p>19 A. This is a demo, so the demo, that's probably      20 when the demo was created. That date is never going      21 to change because its literally stagnant. It's a      22 demo. It's not live.</p>	<p>171</p> <p>1 column is what is the billing unit.      2 Q. Can you describe for the record what the      3 HCPCS code means?</p> <p>4 A. The HCPCS code is a code that's the J code.      5 That's what they use to bill the drug.</p> <p>6 Q. Why does this report contain the OTN      7 dispensing unit price and the AWP minus 5 percent      8 price?</p> <p>9 A. This is a customer facing report.</p> <p>10 Q. A customer what?</p> <p>11 A. A customer report. This is a request, you      12 know, the customer requested that this type of      13 information be on this report, so they have asked for      14 their price to be listed, and then AWP and the code      15 and the unit.</p> <p>16 Q. The AWP price report is always going to show      17 the OTN dispensing unit price, and the AWP based on      18 the modifier that's selected by the client. Correct?</p> <p>19 A. Yes.</p> <p>20 MR. TRETTER: Wait a second. There is also      21 "other."</p> <p>22 Q. If they select "other" you testified that</p>	<p>172</p> <p>173</p> <p>1 Q. Do you know the date that you got the binder?      2 A. That I printed out the binder?</p> <p>3 Q. Yes.</p> <p>4 A. No, I don't know the date, but I would assume      5 it was back when I was a rep, so it was in 2001, 2002      6 time frame. Its after 4-18-01 because that's when it      7 was last updated.</p> <p>8 Q. When you were an RBDM did you have occasion      9 to discuss the AWP price report with your clients?</p> <p>10 A. In reference to showing them what the      11 different reports they could print off of Lynx To OTN,      12 so that's how – it was more of a training and      13 education on how to print out a report for their use.</p> <p>14 Q. Do you recall any specifics that you      15 discussed with your clients with respect to this      16 particular report, the AWP price report?</p> <p>17 A. How I explained it to you a little while ago      18 is exactly how I would explain it to a customer. I      19 would walk them through what the different options      20 were, and then what the titles of each column was, and      21 that's how we train them. Then it was up to them to      22 utilize the report in the way they saw fit.</p>
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<p>1     Q. Did they ever express to you opinions on 2 whether this was useful to them? 3     A. Yes. 4     Q. What opinion would be expressed? 5     A. They felt that it was very useful. 6     Q. Why? 7     A. It gave them information on one page so that 8 they didn't have to go through that giant book on 9 their shelf. 10    Q. In other words, they could access their 11 customer specific price? Correct? 12    A. Yes. 13    Q. And the associated AWP minus whatever 14 parameter they put in? 15    A. Correct. 16    Q. So they wouldn't have to access the AWP 17 information somewhere else? 18    A. Yes. It also saved time for them, that was a 19 comment. 20    Q. And again, why is AWP relevant to them? 21    A. That, again, like I said varies by account. 22    It depends on who their insurers are and how AWP was</p>	<p>174</p> <p>I going to use whatever term they are familiar with. 2 All of the ones you said have been used. 3 Q. And that's relevant to customers because they 4 make money on the difference between what they pay for 5 the drug and what they are reimbursed? Correct? 6 A. Prior to 2005 – it depends, again, on the 7 insurers. It depends on who they are dealing with. 8 Q. Was that a yes prior to that? 9 A. Well, I can't delineate it that way. You are 10 mixing Medicare and private payers and everybody into 11 one thing when they aren't the same. 12 Q. Let's stick with Medicare prior to 2005. 13 A. The answer is yes. 14 Q. That difference is a sort of revenue to the 15 clinic? 16 A. Yes. 17 MR. TRETTER: Or loss. 18 THE WITNESS: Or loss, exactly. 19 Q. Depending on what their actual reimbursement 20 rate is and their actual costs? 21 A. Yes. 22 Q. Are customers still using this report today?</p>
<p>175</p> <p>1 used. I couldn't comment on that. 2 Q. But you do know that at least some of your 3 clients are going to be reimbursed based on AWP? 4 A. It was one of the factors that they were 5 reimbursed on. 6 Q. In your experience what is referred to as the 7 difference between -- what term did your clients use 8 to refer to the difference between the amount they are 9 reimbursed for the drug and the amount that they paid 10 for the drug? 11 A. We didn't really get into discussions about 12 that. That was their side of the business. The 13 discussions were they wanted us to provide information 14 to them. That's not something that was discussed with 15 the distributor. 16 Q. But in the industry in general based on your 17 experience do they call that difference margin? Do 18 they call it revenue? Do they call it spread? I want 19 to know what your experience is. 20 A. I have heard every term under the sun. It 21 depends on who you are talking to. Customers are 22 going to look at this in their business and they are</p>	<p>177</p> <p>1 Is it available? 2 A. This report is no longer available. 3 Q. So in approximately 2005 OTN just took it off 4 the system? 5 A. Yes. 6 Q. Please reference the page that has the Bates 7 No. 6090. There is a line that says, "How do I find 8 AWP information?" Do you see that? 9 A. Yes. "AWP information can be found in the 10 AWP price report. This report lists all the drugs you 11 bought from OTN in the last three months, along with 12 your current price and AWP. To find an AWP for a 13 product not in this report, number 1, go to the 14 catalog search screen, number 2, type in a search, 15 number 3, click on the catalog number of the item you 16 wish to find in AWP for 4, the AWP price will be 17 listed on the right of this product detail page. 18 MR. TRETTER: You missed the word "lower." 19 THE WITNESS: "On the lower right of this 20 product detail page." 21 Q. Does this accurately reflect the AWP price 22 report procedure that we just discussed?</p>

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<p>1 A. Yes.</p> <p>2 Q. Beginning on page 6093 there is a heading 3 that says Lynx Data Definitions. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. The next page talks about acquisition costs. 6 Can you read that, please?</p> <p>7 A. "Acquisition costs represent your practice's 8 acquisition cost or, if the drug was not purchased 9 through OTN, our list price."</p> <p>10 Q. If the drug was not purchased through OTN how 11 would OTN have a record of it?</p> <p>12 A. What I need for you to look at is the context 13 of this bullet point. The context of this bullet 14 point is under Lynx Data Definitions. So this is 15 different reports. These are under those clinical 16 data reports. So the discussion is different than 17 what we were previously talking about.</p> <p>18 Q. So they are going to be driven, in part at 19 least, by the data that is entered by the customer in 20 the Lynx system?</p> <p>21 A. In the Lynx system.</p> <p>22 Q. Thank you. Got it.</p>	<p>178</p> <p>1 A. Yes.</p> <p>2 Q. The second page, the one that has 7538 as the 3 last four Bates numbers, do you see the allocation of 4 resources entry?</p> <p>5 A. Yes.</p> <p>6 Q. Can you please read the three bullet points 7 for us?</p> <p>8 A. "Purchase history reports. Track your 9 purchase patterns. Downloadable into your own Excel 10 spreadsheet for further analysis and evaluation."</p> <p>11 The second bullet, "AWP price reports 12 evaluate various reimbursement scenarios based on 13 AWP."</p> <p>14 The third one is "KJ Consulting can review 15 and support your existing billing and reimbursement 16 processes or provide turnkey setup of a new practice."</p> <p>17 Q. The second bullet references AWP price 18 reports, evaluate various reimbursement scenarios 19 based on AWP. Are there any other type of AWP price 20 reports that we have not already talked about?</p> <p>21 A. No.</p> <p>22 Q. It was just that one that we just went over</p>
<p>1 Those are all the questions that I have on 2 that document.</p> <p>3 Please take a look at Exhibit Peterson 007 to 4 your deposition, which for the record is BMA/AWP/001487357 5 to 7362. Would you please, for the record, identify 6 this document?</p> <p>7 A. To be honest, I'm not exactly sure where it 8 came from. What it looks like to me is individual 9 marketing sales sheets.</p> <p>10 MR. TRETTER: Or, drafts?</p> <p>11 THE WITNESS: Or drafts. I can't tell by 12 this document if they are final copy or if they are 13 drafts.</p> <p>14 Q. So these pages may not necessarily go 15 together?</p> <p>16 A. That is correct.</p> <p>17 Q. But one thing that you seem to be confident 18 about, correct me if I am wrong, is that they are OTN 19 marketing materials. Correct?</p> <p>20 A. Yes.</p> <p>21 Q. I believe these were produced from your 22 files. Do you recognize them?</p>	<p>179</p> <p>1 in Exhibit Peterson 006, correct?</p> <p>2 A. Correct, yes.</p> <p>3 Q. That's the only question that I have about 4 that document. Thank you.</p> <p>5 (Marked Deposition Exhibit Peterson 009.)</p> <p>6 (Recess.)</p> <p>7 Q. For the record, the court reporter has marked 8 as Exhibit Peterson 009 to your deposition a document 9 Bates numbered BMS/AWP/000059345 to 9406. I do not 10 believe this document to be produced from your files.</p> <p>11 Have you seen it before?</p> <p>12 A. No.</p> <p>13 Q. I'd like to draw your particular attention to 14 page number 9394. Can you identify what this is?</p> <p>15 It's a screen shot, right?</p> <p>16 A. It's a screen shot, yes.</p> <p>17 Q. From which system?</p> <p>18 A. I'm not aware. I have not seen this before.</p> <p>19 Q. It looks web based. Right?</p> <p>20 A. Yes, it does.</p> <p>21 Q. Do you see drug designation by diagnosis and 22 regimen over there on the left?</p>

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<p>1 A. Yes.</p> <p>2 Q. Is this an OTN report, do you know?</p> <p>3 A. This is not a report that I've ever seen.</p> <p>4 It's not something that I've ever used, or have</p> <p>5 available to me.</p> <p>6 Q. So you just don't know one way or other?</p> <p>7 A. No, I've never seen it. I've never used it.</p> <p>8 Q. Look forward to page 9396. I will ask the</p> <p>9 same question. Do you know whether this is a screen</p> <p>10 shot from an OTN web site?</p> <p>11 A. I do not know. It looks like a screen shot,</p> <p>12 but I don't know where it's from.</p> <p>13 Q. Look at the prior page --</p> <p>14 A. What number?</p> <p>15 Q. 9395. Look in the internet address. It says</p> <p>16 "HTTPS," and there is a bunch of words. One says "OTN</p> <p>17 net.com."</p> <p>18 That would appear to be OTN, correct?</p> <p>19 A. It says "OTN net on line."</p> <p>20 MR. TRETTER: It says "wire</p> <p>21 worth.OTN.net.com."</p> <p>22 Q. Is this screen shot on this page something</p>	<p>182</p> <p>1 custodian list.</p> <p>2 MR. TRETTER: Also, if you have a particular</p> <p>3 question we can do our best with it.</p> <p>4 MR. MATT: I will follow up with you on that</p> <p>5 in due course.</p> <p>6 (Marked Deposition Exhibit Peterson 010.)</p> <p>7 Q. For the record, this is Bates numbered</p> <p>8 BMS/AWP 000096936 to 96943. On the top left it says</p> <p>9 "Oncology Therapeutics Network." Is this a pricing</p> <p>10 report for Orange Coast Oncology Hematology</p> <p>11 Associates?</p> <p>12 A. I need to look at it.</p> <p>13 Q. Sure. Take your time.</p> <p>14 A. The document states it's a pricing report for</p> <p>15 Orange Coast.</p> <p>16 Q. Have you seen anything like this before?</p> <p>17 A. The format looks familiar. It states things</p> <p>18 on it. It's got current price here, but there is not</p> <p>19 enough specific information to know what price that</p> <p>20 actually is. It looks like it just has certain drugs</p> <p>21 on it. It's not inclusive of everything.</p> <p>22 Q. So is this from Lynx, you think?</p>
<p>183</p> <p>1 you've ever seen before?</p> <p>2 A. No, it is not.</p> <p>3 Q. What about the prior pages of this document?</p> <p>4 They appear to be PowerPoint format. Have you seen</p> <p>5 these before?</p> <p>6 A. No, I have not.</p> <p>7 Q. The issues that are referenced in the early</p> <p>8 pages are issues that John Akscin would be familiar</p> <p>9 with. Correct?</p> <p>10 A. Which pages are you talking about?</p> <p>11 Q. Look at the first 10 pages of the exhibit.</p> <p>12 A. Honestly I can't say who they are from. Even</p> <p>13 John Akscin.</p> <p>14 Q. These are issues that he would be familiar</p> <p>15 with, correct?</p> <p>16 A. I can't answer that. I don't know.</p> <p>17 Q. Do you have someone in the western region</p> <p>18 named Irene?</p> <p>19 A. No, I do not.</p> <p>20 Q. Did you in the past?</p> <p>21 A. No, I did not.</p> <p>22 Q. We will find out what this is when we get the</p>	<p>185</p> <p>1 A. No, it's not from Lynx.</p> <p>2 Q. What about Lynx To OTN, or OTN On Line?</p> <p>3 A. I'm not sure where it's from. It doesn't</p> <p>4 look familiar -- the format of it doesn't look</p> <p>5 familiar to me. I would say it's from OTN. I just</p> <p>6 don't know the format of it, where it was pulled from.</p> <p>7 It's not something that I have access to.</p> <p>8 (Marked Deposition Exhibit Peterson 011.)</p> <p>9 Q. For the record, Exhibit Peterson 011 is Bates</p> <p>10 numbered BMS/AWP/00148783 to 7891. Can you please</p> <p>11 identify this document for the record?</p> <p>12 A. This is a monthly western region summary from</p> <p>13 myself to Gena.</p> <p>14 Q. So you created this document?</p> <p>15 A. Yes, I did.</p> <p>16 Q. And this was maintained in your files in the</p> <p>17 ordinary course of your responsibilities at OTN?</p> <p>18 A. Yes.</p> <p>19 Q. Was it produced from your files?</p> <p>20 A. Yes.</p> <p>21 Q. The first paragraph, would you please read</p> <p>22 that, after "Todd Little"?</p>

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<p>1     A. "Vivian Finch said she had been waiting to 2 set up a database to track pricing but you had been 3 hesitant because she wasn't sure what all she wanted 4 to include. After she saw our AWP report on Lynx To 5 OTN she knew and basically copied our report. She 6 loves Lynx To OTN."</p> <p>7     Q. Did the AWP report that is referenced here, 8 is that the AWP price report that we talked about 9 before?</p> <p>10    A. Yes.</p> <p>11    Q. On page 7885 there is a reference to Cary 12 Harris. Do you see that?</p> <p>13    A. Yes.</p> <p>14    Q. Could you read the second bullet for me?</p> <p>15    A. "Benchmarking reports for offices moving into 16 aggressive reimbursement next year."</p> <p>17    Q. What does that mean?</p> <p>18    A. I would like to refer back to the page 19 previous to that, because it's under a category called 20 OTN Differentiation Successes. This is a bullet under 21 Cary Harris. He is referring to benchmarking reports, 22 the reports that customers are able to get off of our</p>	<p>186</p> <p>1     were changes to Medicare. 2     Q. So that is about Medicare? 3     A. Yes. 4     Q. What changes are you referencing? 5     A. The changes in 2004 that came with the 6 Medicare Modernization Act that hit in 2004. 7     Q. Are you talking about the change from AWP 8 based to ASP based reimbursements? 9     A. No, that happened in 2005. 10    MR. TRETTER: 85 percent of AWP? 11    THE WITNESS: Yes. They had never had any 12 changes. This was the start of the Medicare 13 Modernization Act. 14    Q. It changed from 95 to 85? 15    A. Yes. 16    Q. Percent. 17    A. And not just on that, but just the 18 environment, because things were new to them in 2004, 19 and they were hearing about the changes and were 20 knowing it was going to be a whole new thing. They 21 called it "aggressive reimbursement" next year. That 22 was a quote from a customer.</p>
<p>187</p> <p>1     web site. When I was talking about the clinical data 2 reports, it is for sites that actually utilized those 3 reports. They were able to do some benchmarking as 4 far as how they looked as compared to results from the 5 state and the nation.</p> <p>6     Q. Who is Cary Harris?</p> <p>7     A. He was an RBDM, I believe at that point in 8 time. He hadn't changed yet.</p> <p>9     Q. What does aggressive reimbursement mean?</p> <p>10    A. Let's see what year this is from. This is 11 from 2003, so he is looking at next year, which is 12 2004, and he is referring to offices moving into 13 aggressive reimbursement next year, so he is referring 14 to customers that are leery of 2004 changes. So we 15 are moving into a very aggressive year and they are 16 having to take a look at their business and make sure 17 that they understand what they are getting into. This 18 is in reference to what his accounts are saying to 19 him.</p> <p>20    Q. I still don't understand what "aggressive 21 reimbursement" means.</p> <p>22    A. Aggressive reimbursement is in 2004 there</p>	<p>189</p> <p>1     Q. I still don't know where to grasp what you 2 are saying in this context.</p> <p>3     A. I would say it's in the context of a customer 4 explaining to a rep that the customers were nervous. 5 They knew things were going to change in 2004. They 6 used the word "aggressive" saying that their world was 7 going to be changed. He used the word "aggressive." 8 It was probably something said to him by one of his 9 customers.</p> <p>10    Q. Do you think it refers to making sure that 11 they are reimbursed for everything that they can be 12 reimbursed for?</p> <p>13    A. I can't say. It's a statement he made in 14 response to his customer's responses.</p> <p>15    Q. He has communicated it to you and then you 16 included it in this report. Right?</p> <p>17    A. Exactly. This report is a compilation of all 18 -</p> <p>19    MR. TRETTER: What was your understanding 20 when you included it in your report of what you 21 thought he meant? That's all you can testify to.</p> <p>22    THE WITNESS: OTN Differentiation Successes</p>

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<p>1     is the category its under. Customers were looking at 2     our reports that we were giving to them on the web 3     site as helping them in understanding their business 4     to prepare for 2004. 5         (Marked Deposition Exhibit Peterson 012, Exhibit 6     Peterson 013, Exhibit Peterson 014, Exhibit Peterson 015, 7     Exhibit Peterson 016, Exhibit Peterson 017.) 8     Q. The court reporter has marked Exhibit Peterson 012 9     to your deposition, which is a document Bates numbered 10   BMS/AWP 001483892 to 4101. 11   A. Which one are you on? 12         (Discussion off the record.) 13   Q. Exhibit Peterson 012 to your deposition is Bates 14   No. BMS/AWP 0014834077 to 4101. Could you please identify 15   for the record this document? 16   A. The first sheet is an email from Jim Smith to 17   myself, Joe Warrenson and Gena, subject MSHO bid, all 18   caps. 19   Q. And the second document? 20   A. The second document? 21   Q. Please identify that. It's part of the same 22   exhibit.</p>	<p>190</p> <p>1     This is a MSHO bid which actually isn't under my area 2     of responsibility. 3     Q. But your name is on the email, correct? 4     A. Yes, to be copied on it. 5     Q. So to the best of your knowledge you received 6     this? 7     A. Yes. 8     Q. That's the only question that I have for you. 9         Exhibit Peterson 013, for the record, is Bates 10   numbered BMS/AWP/001487651 to 7658. 11   Can you identify this for the record, please? 12   A. This is an email from Craig Wilson sent to 13   recap, OTN recap, Mary Donovan and Marsha Peterson 14   regarding Western Hematology Oncology. 15   Q. And you were a recipient on the email "to" 16   line. Correct? 17   A. Yes. 18   Q. To the best of your knowledge was this 19   produced from your files, or your email system? 20   A. Yes. 21   Q. That's the only question that I have on that. 22         Exhibit Peterson 014 is BMS/AWP/001487993 to 7995.</p>
<p>1     A. This doesn't say on this front page that 2     there is an attachment to it. 3     Q. What is MSHO stand for? 4     A. That is Michigan State Hematology Oncology. 5     Q. What is the attached document? 6     A. The attached document is a proposal to the 7     Michigan State Hematology and Oncology Society. 8     Q. This is how it was produced to us, stapled 9     together. I will represent that to you. 10   A. Okay. 11   Q. Is this a document that was produced from 12   your files? 13   A. Produced from my files? Yes. 14   Q. So it was maintained by you in the ordinary 15   course of your responsibilities as an OTN employee? 16         MR. TRETTER: If this was an email it may 17   have been part of the email system. When you are 18   saying "part of her files," we produced Marsha's 19   emails as well, so it could be that it was on some 20   sort of email server. 21         THE WITNESS: That's what I'm saying, the 22   attachment was there -- I get sent a lot of emails.</p>	<p>191</p> <p>1     Could you please identify this for the record? 2     A. This is an email from Julie Trueblood to 3     recap Marsha Peterson and Eric Ivey regarding 4     Dr. Kovax. 5     Q. To the best of your knowledge was this an 6     email that you received? 7     A. Yes. 8     Q. And it was provided from either your email 9     system or your hard copy files. Correct? 10   A. Yes. 11   Q. No more questions on that. I would, however, 12   like to ask you a question on the prior Exhibit Peterson 13   013. We have talked earlier about the site 14   notes, I think we called it. 15   A. Yes. 16   Q. Is this an example of a site note? 17   A. This is a example of a site note by an RBDM. 18   Q. Would this be pre CIA system, or post CIA 19   system? 20   A. Pre CIA. 21   Q. So this would be a Word document? 22   A. Yes.</p>

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<p>1     Q. Is this format typical of the site notes that 2 were generated by RBDMs prior to initiation of the CIA 3 system?</p> <p>4     A. Are you asking me about the format?</p> <p>5     Q. Yes.</p> <p>6     A. Yes.</p> <p>7     Q. Exhibit Peterson 015, for the record, is 8 BMS/AWP/001487838 to 7844. Can you identify this 9 document?</p> <p>10    A. This is a customer site note on Hematology 11 Oncology Associates in Fort Collins, Colorado from 12 Craig Wilson.</p> <p>13    Q. He was the RBDM at the time. Correct?</p> <p>14    A. Yes.</p> <p>15    Q. And you were the RBDM manager at the time?</p> <p>16    A. Yes.</p> <p>17    Q. So Mr. Wilson would have provided this to 18 you?</p> <p>19    A. Yes.</p> <p>20    Q. Is this in the Word format or the CIA format?</p> <p>21    A. Word format.</p> <p>22    Q. To the best of your knowledge it was produced</p>	<p>194</p> <p>1     Q. Exhibit Peterson 017, BMS/AWP14483821 to 3836. 2 Can you identify this document for us, please?</p> <p>3     A. It's an email from Julie Trueblood on 4 September 22nd to the recap, myself, Amy Lee, Jan 5 Woods on an account called Synergy –</p> <p>6     MR. TRETTER: When you are reading, 7 especially, you need to slow down.</p> <p>8     THE WITNESS: On Synergy Hematology 9 Oncology. It has an attached site note.</p> <p>10    Q. To the best of your knowledge was it produced 11 from your email?</p> <p>12    A. Email or electronic. Yes.</p> <p>13    Q. Is this a CIA format, or Word document, if 14 you can tell?</p> <p>15    A. Word document.</p> <p>16    MR. TRETTER: We didn't produce anything off 17 of CIA, it was so recent.</p> <p>18    THE WITNESS: What number did this go 19 through? Do you have the numbers?</p> <p>20    Q. The last number I have on mine is 3836.</p> <p>21    A. It looks like its two in one.</p> <p>22    Q. Two that are combined?</p>
<p>1     from either your hard copy files or your computer, 2 correct?</p> <p>3     A. Yes. It's hard to say on this because it's 4 just a print. There is no email cover on it.</p> <p>5     Q. The next exhibit, Exhibit Peterson 016, 6 BMS/AWP/001483729 to 3733. Could you identify this 7 for the record, please?</p> <p>8     A. It's an email from Julie Trueblood to the 9 recap, Amy Lee and Marsha Peterson, on Dr. Bernstein.</p> <p>10    Q. This is another site note?</p> <p>11    A. Yes.</p> <p>12    Q. To the best of your knowledge was it produced 13 from your computer or your hard copy files?</p> <p>14    A. Yes.</p> <p>15    MR. TRETTER: I don't think it's from the 16 hard copy files.</p> <p>17    THE WITNESS: It wouldn't be hard copy. Its 18 email or electronic.</p> <p>19    MR. TRETTER: That would be true for all of 20 these?</p> <p>21    THE WITNESS: Yes, it would be true for all 22 of them.</p>	<p>195</p> <p>1     A. Yes.</p> <p>2     Q. Two different customers. Oh, I see. Yes.</p> <p>3     Thanks for pointing that out. If there is no 4 objection we will just leave it combined for purposes 5 of record identification.</p> <p>6     MR. TRETTER: As long as its two of the same.</p> <p>7     THE WITNESS: Its two different customers.</p> <p>8     MR. TRETTER: It's the same person?</p> <p>9     THE WITNESS: It's from the same person.</p> <p>10    Q. Julie Trueblood is a TBDM now, right?</p> <p>11    A. Yes.</p> <p>12    Q. We talked about the AWP price report?</p> <p>13    A. Yes.</p> <p>14    Q. And we have talked about the fact that OTN 15 keeps those names in that report from Red Book?</p> <p>16    A. Yes.</p> <p>17    Q. Does AWP play any other role in your 18 business, in your area of responsibility?</p> <p>19    MR. TRETTER: Objection to the form.</p> <p>20    THE WITNESS: That's very broad.</p> <p>21    Q. Let me ask you a broader question. 22    What role does AWP play in your personal</p>

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<p>1 responsibilities at OTN?      2 A. AWP doesn't play a role in my      3 responsibilities.      4 Q. But you are familiar with it in the context      5 of the reports we have discussed, correct?      6 A. Yes.      7 Q. Are you familiar with it in any other context      8 in carrying out your responsibilities at OTN?      9 (Marked Deposition Exhibit Peterson 018,      10 Exhibit Peterson 019.)      11 Q. For the record, Exhibit Peterson 018 is BMS/AWP      12 001487892 to 7899. Would you identify this for the      13 record, please?      14 A. This is a western regional summary for March      15 from myself to Gena.      16 Q. So you prepared this?      17 A. Yes, I did.      18 Q. And it was produced from your files, either      19 electronic or paper?      20 A. Electronic, yes.      21 Q. I would like you to reference page 7896. It      22 says "teamwork successes." Do you see the entry,</p>	<p>198</p> <p>1 THE WITNESS: This is in 2003. The Taxol      2 Paraplatin program was a program where it would track      3 how much — there was a baseline for their Taxol      4 purchases that was from a time period, I can't      5 remember the exact date. There was a baseline      6 recorded. If they achieved a percentage of that      7 baseline they would get a 4 percent rebate on      8 Paraplatin.      9 Q. BMS is Paraplatin, correct?      10 A. Correct.      11 Q. Was this a program that was put together      12 jointly between OTN and BMS?      13 A. This was a BMS program implemented by OTN      14 because we were selling the drugs, so it was a program      15 that we tracked and provided to our customers.      16 Q. Was this put into place at about the time      17 Taxol went generic?      18 A. Well, this was 2003 that this report is from,      19 so I don't know the exact date of the Taxol Paraplatin      20 program. We would have to look at the date of      21 initiation of that program.      22 Q. Did that program have different names?</p>
<p>1 bullet point for BMS OTN synergy?      2 A. Yes.      3 Q. Could you read the entry under that, please?      4 A. "Houston BMS team. Craig Wilson, Mindy      5 Anderson. Breakfast meeting where the Taxol Para      6 program was discussed. There was a question and      7 answer forum which they were able to answer many      8 questions regarding OTN and our overall strategy. Met      9 new members of the team and made plans to work closely      10 together."</p> <p>11 Q. At the time you were an RBDM?      12 A. At the time? I was manager of the TBDMs.      13 Q. And that passage that you just read      14 references questions regarding OTN and our overall      15 strategy. What, to your recollection, were you      16 referencing there?      17 A. Its in reference to the Taxol Para program.      18 Q. Could you describe that for us?      19 A. What would you like me to describe?      20 Q. What is the Taxol Para program?      21 MR. TRETTER: At that time?      22 MR. MATT: At that time, exactly.</p>	<p>199</p> <p>1 A. The Taxol Paraplatin program had one name, to      2 my knowledge, and that was the Taxol Paraplatin      3 program.      4 Q. Is that different from the Taxol value      5 program?      6 A. I'm not sure what the Taxol value program      7 was.      8 Q. How about the Taxol opportunity program?      9 A. I am not sure what the Taxol opportunity      10 program was.      11 Q. What about the Taxol incentive program? Are      12 you familiar with that?      13 A. I am not. There were a lot — there are so      14 many different programs, I can't remember. A lot of      15 this stuff was a while ago.      16 Q. Are you familiar with the term "customer      17 buckets"?</p> <p>18 A. Yes.      19 Q. What does that mean to you?      20 A. It was a program.      21 Q. What was its title?      22 A. I can't remember the actual title of the</p>

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<p>1 program. It was related to Taxol. It may be one of      2 these there. I don't remember.</p> <p>3 Q. I think I've seen some documents suggesting      4 that there were three different buckets and there were      5 different prices or discounts associated with each      6 bucket.</p> <p>7 Does that sound at all familiar to you?</p> <p>8 A. There were three programs, and each bucket,      9 you know, they called them buckets internally, that      10 was marketing, and there were three programs, yes.</p> <p>11 Q. Was that based on volume of purchases of      12 Taxol?</p> <p>13 A. It was based on a lot of variables, and I      14 didn't design the program so I'm not sure exactly what      15 all the variables were.</p> <p>16 Q. Was that part of the Taxol Paraplatin      17 program, or was that a separate program?</p> <p>18 A. That was a separate program. Now that I see      19 those words and now that you say the bucket program, I      20 believe that the Taxol value program, Taxol      21 opportunity program, and Taxol –</p> <p>22 Q. – incentive program?</p>	<p>202</p> <p>1 the week of our national meeting. Each TBDM presented      2 OTN strategy for 2003 with a provided PowerPoint for      3 consistency. Feedback has been very positive. The      4 general feeling is that BMS and OTN will be working      5 very closely in 2003 to make OTN the only place to      6 purchase BMS products."</p> <p>7 Q. The POA meetings referenced, what does it      8 stand for?</p> <p>9 A. Plan of action.</p> <p>10 Q. Who was in attendance for BMS?</p> <p>11 A. That was a BMS sales meeting, and there were      12 10 of them.</p> <p>13 Q. I'm sorry, you mean BMS sales reps?</p> <p>14 A. BMS sales reps, oncology.</p> <p>15 Q. When you reference the western region team, I      16 assume you are referencing OTN personnel, correct?</p> <p>17 A. The western region team, what I'm referring      18 to is the territory business development manager from      19 the west.</p> <p>20 Q. Who at the time was you?</p> <p>21 A. Who at the time were my six TBDMs, whoever      22 was in place at that time.</p>	<p>204</p>
<p>1 A. Those words were used interchangeably at      2 times. I don't remember without seeing a program      3 document which one went to which.</p> <p>4 Q. It could be all referring to the same      5 program, for all you know?</p> <p>6 MR. TRETTER: Don't speculate.</p> <p>7 THE WITNESS: I don't know.</p> <p>8 Q. Turn to Exhibit Peterson 019. Its      9 BMS/AWP/001487900 to 7907. Could you identify      10 this, please, for the record?</p> <p>11 A. This is a western region summary from      12 February 2003 to Michael Pollock and Faheem from      13 Marsha Peterson.</p> <p>14 Q. This was produced out of your electronic      15 files. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. Could you look at page 7904, please? There      18 is an entry under BMS OTN synergy. Could you read      19 into the record the first bullet point?</p> <p>20 A. "The western region team was able to attend      21 eight out of 10 BMS POA meetings in late January and      22 early February. Two were missed because they occurred</p>	<p>203</p> <p>1 Q. So you and the six TBDMs?</p> <p>2 A. Myself and the six TBDMs.</p> <p>3 (Marked Deposition Exhibit Peterson 020.)</p> <p>4 Q. Exhibit Peterson 020 is a compilation of documents      5 that are not necessarily all in Bates number order.</p> <p>6 MR. TRETTER: Is this something that you put      7 together?</p> <p>8 THE WITNESS: I put it together.</p> <p>9 Q. I think you will find as a common theme that      10 you were a recipient of each email.</p> <p>11 THE WITNESS: This one I wasn't. It's      12 01168868 through 70.</p> <p>13 Q. Please pull that one out.</p> <p>14 Can you confirm that you were a recipient on      15 all of the emails in this exhibit?</p> <p>16 A. I'm either a cc or a "to" in all.</p> <p>17 Q. I believe that all these emails concern the      18 Taxol program, in one form or another.</p> <p>19 My question to you is this: Look at the      20 email dated January 1, 2003, which is several pages      21 in.</p> <p>22 A. Which number at the bottom?</p>	<p>205</p>

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<p>1 Q. 01230015.</p> <p>2 A. Okay.</p> <p>3 Q. This discusses the buckets that we were just</p> <p>4 discussing, correct?</p> <p>5 MR. TRETTER: There is a reference to a</p> <p>6 bucket.</p> <p>7 THE WITNESS: It's on the Taxol opportunity</p> <p>8 program, is what it's on.</p> <p>9 Q. Does that refresh your recollection that the</p> <p>10 buckets were related to the Taxol opportunity program?</p> <p>11 A. From here it says "Taxol opportunity</p> <p>12 program," and there is "buckets" underneath it, so</p> <p>13 yes.</p> <p>14 Q. Look at the graph on page 1230018.</p> <p>15 A. Okay.</p> <p>16 Q. Chart number 2 shows a line of Taxol sales</p> <p>17 trend prior to the Taxol opportunity program. Do you</p> <p>18 see that?</p> <p>19 A. I see the wording on the graph with an arrow</p> <p>20 pointing up saying "Taxol pricing."</p> <p>21 Q. And you have seen this graph before?</p> <p>22 A. Yes.</p>	<p>206</p> <p>1 milligrams level leveled off instead of kept going</p> <p>2 down.</p> <p>3 Q. Instead of trending downward it leveled off?</p> <p>4 A. Yes, that's what the graph shows me.</p> <p>5 Q. Is that attributable to the Taxol opportunity</p> <p>6 program?</p> <p>7 A. On this chart it states here is the trend</p> <p>8 prior to, and this is after, so you can deduce that</p> <p>9 from this chart, I would assume.</p> <p>10 Q. You can look through this exhibit. You can</p> <p>11 characterize it as you wish. When I look at it I see</p> <p>12 a series of emails that are tracking Taxol sales.</p> <p>13 A. Yes.</p> <p>14 Q. On a periodic basis.</p> <p>15 MR. TRETTER: You mean looking across all the</p> <p>16 emails in the whole exhibit?</p> <p>17 MR. MATT: Yes.</p> <p>18 Q. My question is this: You are a recipient on</p> <p>19 all of them. The list of the various recipients of</p> <p>20 the emails, are these all OTN people, or a combination</p> <p>21 of BMS and OTN people?</p> <p>22 A. It's a combination.</p>
<p>1 Q. So you recognize this?</p> <p>2 A. Yes.</p> <p>3 Q. And there is a dotted line there?</p> <p>4 A. Yes, I see that.</p> <p>5 Q. Do you know what that signifies?</p> <p>6 A. No, I do not.</p> <p>7 Q. I think it's the approximate date that the</p> <p>8 opportunity program was instituted. Does that make</p> <p>9 sense?</p> <p>10 A. No, not necessarily, because the line over</p> <p>11 here says "Taxol sales trends prior to Taxol</p> <p>12 opportunity program," and that's way over. To me it's</p> <p>13 a dotted line that shows where the trend changed. I</p> <p>14 don't think it has to do with anything different.</p> <p>15 Q. Does this chart reflect, in your mind, that</p> <p>16 the Taxol opportunity program was successful at this</p> <p>17 point?</p> <p>18 MR. TRETTER: Objection to the form. I don't</p> <p>19 know how he is defining that term, but go ahead.</p> <p>20 THE WITNESS: Defining "successful"?</p> <p>21 What this graph shows to me is that at the</p> <p>22 date where the dotted line is the Taxol weekly</p>	<p>207</p> <p>1 Q. I am not going to read in all these Bates</p> <p>2 numbers because it will take 10 minutes. All I will</p> <p>3 say for the record is that the first Bates number is</p> <p>4 01092050, and the last Bates number is 01114860.</p> <p>5 MR. TRETTER: They were not in consecutive</p> <p>6 order. It's like telling somebody the sports score is</p> <p>7 7-3.</p> <p>8 MR. MATT: Can we ask the court reporter</p> <p>9 after the deposition to inventory all the Bates</p> <p>10 numbers on this exhibit?</p> <p>11 (Discussion off the record.)</p> <p>12 MR. MATT: Exhibit Peterson 020 is a series of</p> <p>13 weekly Taxol updates. It's comprised of various emails,</p> <p>14 and I'm going to read into the record the date of each</p> <p>15 email. September 19, 2002, 9:26 a.m.; January 12,</p> <p>16 2003, 5:18 p.m.; March 16, 2003, 1:59 p.m.; March 24,</p> <p>17 2003, 1:53 p.m.; March 30, 2003, 1:39 p.m.; March 30,</p> <p>18 2003, 4:06 p.m.; April 7, 2003, 2:06 p.m.; April 10,</p> <p>19 2003, 7:04 p.m.; April 13, 2003, 9:40 p.m.; April 13,</p> <p>20 2003, 9:42 p.m.; April 20, 2003, 7:18 p.m.; April 21,</p> <p>21 2003, 12:58 p.m.</p> <p>22 MR. TRETTER: Hold on. We didn't have that</p>

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<p>1 one.</p> <p>2 MR. MATT: We will come back to that one,</p> <p>3 April 26, 2003, 9:57 p.m. April 2, 2003, 10:18 a.m.</p> <p>4 MR. TRETTER: We have two versions of April</p> <p>5 26.</p> <p>6 THE WITNESS: It's the same cover and nothing</p> <p>7 behind it.</p> <p>8 Q. Do you have the April 28, 2003 email?</p> <p>9 A. Yes.</p> <p>10 Q. May 2, 2003, 8:15 p.m.</p> <p>11 A. They gave them different numbers. It's the</p> <p>12 exact same document.</p> <p>13 Q. Hold on. I have one that is 8:15 p.m. and</p> <p>14 8:16 p.m. and then 8:19 p.m.</p> <p>15 Then we go to June 7, 2003, 7:24 p.m.</p> <p>16 MR. TRETTER: You skipped May 24.</p> <p>17 Q. That was the last one.</p> <p>18 Do you have June 7, 2003, 7:24 p.m.; June 8,</p> <p>19 2003, 8:32 p.m.; June 14, 2003, 4:51 p.m.; and the last</p> <p>20 one is June 20, 2003, 10:53 p.m.?</p> <p>21 We are missing April 21, correct?</p> <p>22 A. Yes.</p>	<p>210</p> <p>1 Q. And this would have been provided to you,</p> <p>2 correct?</p> <p>3 A. Electronically, yes.</p> <p>4 Q. Would you please review page 7820? Item</p> <p>5 number 4, Taxol, can you please read that?</p> <p>6 A. "Gave her new Taxol pricing, 11.85. She was</p> <p>7 pleased. I discussed the fact that they need to</p> <p>8 review the spread of Taxol versus Taxotere taking into</p> <p>9 consideration Carbo 4 percent and lower price."</p> <p>10 Q. Who created this report?</p> <p>11 A. Tess Caterinichio.</p> <p>12 Q. And she worked for you, correct?</p> <p>13 A. She was an RBDM that worked for me.</p> <p>14 Q. When she says "review the spread of Taxol</p> <p>15 versus Taxotere," what do you believe she is</p> <p>16 referencing?</p> <p>17 A. What she is referencing, as you will notice,</p> <p>18 the whole phrase talks about taking into</p> <p>19 consideration — the Carbo 4 percent is what she is</p> <p>20 talking about, is the customer needs to look at her</p> <p>21 price from OTN on Taxol as well as Taxotere, look at</p> <p>22 those two prices, and make sure she calculates in the</p>
<p>1 MR. TRETTER: Yes, I think so, or one of the</p> <p>2 April 21s.</p> <p>3 So the record is clear, most of these are</p> <p>4 weekly Taxol updates that is the subject line, except</p> <p>5 for the first one which is called Taxol Value</p> <p>6 Program. And sometimes they have attachments to the</p> <p>7 email and sometimes they don't.</p> <p>8 Q. Sorry for having to put you through that, but</p> <p>9 it was for a good cause because we did find out that</p> <p>10 one of the pieces were missing. We will have copies</p> <p>11 made now and complete the exhibit.</p> <p>12 (Discussion off the record.)</p> <p>13 (Marked Deposition Exhibit Peterson 021,</p> <p>14 Exhibit Peterson 022.)</p> <p>15 MR. MATT: For the record, we have completed</p> <p>16 Exhibit Peterson 020 and it now does include an email dated</p> <p>17 April 21, 2003, 12:58 p.m. and attachment. The court</p> <p>18 reporter has marked as Exhibit Peterson 021 Bates Nos.</p> <p>19 BMS/AWP/001487818 to 7823. Can you identify this for</p> <p>20 the record, please?</p> <p>21 THE WITNESS: This is a customer site note,</p> <p>22 Rainier Oncology, from Tess Caterinichio.</p>	<p>211</p> <p>1 4 percent of Carbo on that Taxo Carbo program because</p> <p>2 it is a program that allows them to lower the</p> <p>3 effective price of Taxol. So when she is talking</p> <p>4 about "spread" she is talking about the difference</p> <p>5 between the OTN price of Taxol versus the OTN net</p> <p>6 price of Taxotere.</p> <p>7 Q. Is that part of the Taxol Paraplatin program?</p> <p>8 A. The Taxol-Paraplatin program, the 4 percent</p> <p>9 is for Taxol. So she wanted to make sure that this</p> <p>10 customer looked at the net net price of Taxol with OTN</p> <p>11 and the net net price of Taxotere so that she was</p> <p>12 really taking a look at those two products side by</p> <p>13 side.</p> <p>14 Q. My question is, where it says Carbo 4</p> <p>15 percent, that's a reference to Paraplatin, right?</p> <p>16 A. Yes.</p> <p>17 Q. And Carboplatin is the generic name?</p> <p>18 A. Yes, that's right.</p> <p>19 Q. Exhibit Peterson 022, Bates No.</p> <p>20 BMS/AWP/001487761.</p> <p>21 Were you copied on this email?</p> <p>22 A. I was cc'd on this email, yes.</p>

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<p>1 Q. To the best of your knowledge was it produced 2 through your electronic files?</p> <p>3 MR. TRETTER: Or her emails.</p> <p>4 THE WITNESS: Or my emails, yes.</p> <p>5 Q. Do you see where it says "Tennessee ONC 6 margin tool"?</p> <p>7 A. Yes.</p> <p>8 Q. What does "margin tool" mean?</p> <p>9 A. This is in reference - this message is from 10 OTN to OTN, so its OTN's margin, when we do a customer 11 specific margin for our business to see how profitable 12 they are.</p> <p>13 Q. Turn to the next page, profit percentage. Do 14 you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Is this profit to OTN?</p> <p>17 A. Yes, this is a profit analysis for this 18 particular customer for OTN, for our pricing.</p> <p>19 Q. What does OP volume mean?</p> <p>20 A. OP is other products.</p> <p>21 Q. So this does not refer to profits that the 22 oncology customer makes, correct?</p>	<p>214</p> <p>1 billing unit, drug name, other name, unit size, AWP, 2 and the next three columns are OS, which stands for 3 Oncology Supply, so that is a competitive price. The 4 OS cost, which is their price times their usage, so 5 the usage is the last column which is 20, so you take 6 the 750 times 20 and get the cost.</p> <p>7 Q. I will represent to you that this document 8 was produced out of your files. Had you seen it 9 before?</p> <p>10 A. I don't remember it. It doesn't have an 11 identifier on it. It just is a set of numbers to me.</p> <p>12 Q. Is this something that could have come from 13 Oncology Supply?</p> <p>14 A. It could have come from Oncology Supply, yes.</p> <p>15 Q. Is this something that may have been provided 16 to you or one of your TBDMs by a customer?</p> <p>17 A. Yes, it could be. I can't tell. There is 18 not enough identifiers on here to see when or where 19 it's from. I can't tell anything.</p> <p>20 Q. No further questions on that one.</p> <p>21 (Marked Deposition Exhibit Peterson 024.)</p> <p>22 Q. Exhibit Peterson 024 is Bates numbered BMS/AWP</p>
<p>1 A. Rephrase that, please.</p> <p>2 Q. Tennessee Oncology, the profit percentage, 3 this isn't profit percentage to Tennessee Oncology, 4 this is to OTN?</p> <p>5 A. Yes, OTN's internal profit on that customer.</p> <p>6 Q. Okay.</p> <p>7 MR. TRETTER: This has nothing to do with 8 reimbursement.</p> <p>9 MR. MATT: Thanks. No more questions for 10 that one.</p> <p>11 MR. KUSHNER: When the witness identified OP 12 as being other products, that is distinct from 13 Bristol-Myers' products.</p> <p>14 (Marked Deposition Exhibit Peterson 023.)</p> <p>15 Q. For the record, this is document Bates 16 numbered BMS/AWP 01485773 to 5780.</p> <p>17 Can you identify for the record what this 18 document is?</p> <p>19 A. It's rather disjointed. It looks like a 20 spreadsheet. It's on many, many pages. There is no 21 identifier on the top. It's a listing of products 22 with different categories. One is NDC, one is J code,</p>	<p>215</p> <p>1 001484591 to 4613. Can you identify this for the 2 record?</p> <p>3 A. This is an email from Gena to myself and Todd 4 Little, subject OHOA with drug purchases. The 5 attached document to it represents a purchase history 6 report for this particular customer.</p> <p>7 Q. What software generated this report?</p> <p>8 A. Lynx To OTN.</p> <p>9 Q. So does the purchase history report also 10 contain AWP information?</p> <p>11 A. It depends on what time frame, again. The 12 time frame on this is 2003, so I can say in 2003 on 13 this date it did contain an AWP.</p> <p>14 Q. To your knowledge did it contain AWP 15 information prior to January of 2005?</p> <p>16 MR. TRETTER: 2005?</p> <p>17 THE WITNESS: This says "2003."</p> <p>18 Q. I know. I'm asking another question.</p> <p>19 You had frequently asked me to clarify time 20 periods.</p> <p>21 A. Yes.</p> <p>22 Q. So this purchase history report that is</p>

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<p>1 generated in the Lynx To OTN system, did it always 2 contain AWP information prior to 2005?</p> <p>3 A. I don't know.</p> <p>4 Q. What use were you making of this report?</p> <p>5 A. This, as it states on the front page, is the 6 drug purchases for this account, so this was sent from 7 Gena to myself and Todd showing us how much of each of 8 these products were purchased, so it's a volume 9 report.</p> <p>10 Q. There is nothing of special significance with 11 this client? Why, do you know, was Ms. Cook sending 12 this to you?</p> <p>13 A. She was just giving me drug purchases. It 14 doesn't say why she sent it. I don't remember what it 15 was for specifically. She is just sending me volumes.</p> <p>16 Q. What client is this again, OHOA?</p> <p>17 A. I can't actually tell you because OHOA is a 18 very common acronym in community based oncology.</p> <p>19 Q. For what?</p> <p>20 A. Well, oncology, hematology, oncology 21 associates. It could stand for anything. I don't 22 know because they use a lot of Os and Hs.</p>	<p>218</p> <p>1 Q. Take a look at that information at the bottom 2 footer in the center.</p> <p>3 A. It's from OTN. It just says "pricing 4 information not available on line."</p> <p>5 MR. TRETTER: It says "also available."</p> <p>6 THE WITNESS: Its saying you can go there, 7 but this may be an internal document. I can't tell. 8 I have not seen it. I am not familiar with this 9 format. It's not something that we normally generate, 10 me being the TBDM or myself would generate. It has 11 the same look, though.</p> <p>12 (Marked Deposition Exhibit Peterson 026.)</p> <p>13 Q. For the record, Exhibit Peterson 026 is BMS/AWP 14 001484114 to 4141. Would you please identify this for 15 the record?</p> <p>16 A. It is an email from Todd Little to Marsha 17 Peterson and Eric Ivey. It is a price analysis for 18 JOA, but I am questioning this document because the 19 email says it is a price analysis, but the attachment 20 looks like a customer price list. It says "price 21 analysis."</p> <p>22 MR. TRETTER: Look at this, though.</p>
<p>219</p> <p>1 Q. The AWP column, is that something that you 2 are interested in?</p> <p>3 A. No, not for the purposes of this. This is 4 just on the report because it's a customer facing 5 report.</p> <p>6 Q. This is a report that the customer can access 7 from Lynx To OTN?</p> <p>8 A. Yes.</p> <p>9 (Marked Deposition Exhibit Peterson 025.)</p> <p>10 Q. Exhibit Peterson 025 is Bates number 11 BMS/AWP/001484142 to 4183. Would you identify this 12 for the record, please?</p> <p>13 A. This is an Orange Coast Oncology Hematology 14 Associates report which appears to be -- it's a price 15 report. It's a customer specific pricing.</p> <p>16 Q. But it's not an AWP price report?</p> <p>17 A. No, it is not. It's a customer price report 18 because it has the term of the customer 2 percent 19 direct debit on the top.</p> <p>20 Q. Is this printed from Lynx To OTN?</p> <p>21 A. I actually don't know where it is produced 22 from. I can't tell by this where its produced from.</p>	<p>220</p> <p>1 THE WITNESS: The attached document has JOA 2 OTN 329, which is an account number, and this is a 3 list of their current pricing.</p> <p>4 Q. So the attachment itself, what is that 5 called?</p> <p>6 A. A price report, customer price report.</p> <p>7 Q. An internal document?</p> <p>8 A. Again, looking at the date of 2003, I'm not 9 exactly sure of the source of where they got this 10 report from. It looks like just a regular customer 11 price report.</p> <p>12 Q. My question is: Is this something that the 13 customer can access?</p> <p>14 A. Yes.</p> <p>15 Q. This is being provided by Mr. Little. Is he 16 asking for approval of the pricing for this client?</p> <p>17 A. I want to go on the record to say -- oh, here 18 we go. Let me take a minute here.</p> <p>19 Q. Sure.</p> <p>20 A. It's very disjointed because its printed off 21 a spreadsheet so nothing is sequential so it's hard 22 for me to see what columns go with what. There are</p>

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<p>1 question marks and its next to nothing.      2 Do you see what I'm saying? It's hard for me      3 to comment on.      4 Q. We just copied this as it was produced out of      5 your files. This was produced from your electronic      6 file or email. Correct?      7 A. Yes.      8 Q. Look at the last couple pages. There is a      9 comparison set out between OTN and COIN. What is      10 COIN?      11 MR. TRETTER: That doesn't necessarily mean      12 anything. We have to realize we have vendors dealing      13 with millions of documents. It doesn't necessarily      14 mean it was accurate the way it was originally sent.      15 MR. MATT: This is the way it was stapled      16 when it was sent to me.      17 THE WITNESS: It's hard for me to see how      18 these are together.      19 Q. What does COIN mean, C-O-I-N?      20 A. It says "original presentation by NSS," so      21 COIN, it looks like it's a copy of a competitive      22 pricing, that a competitor gave to the customer</p>	<p>222</p> <p>1 Q. And this was sent to you, correct?      2 A. Yes, it was.      3 Q. And it was produced from your electronic      4 files or email files. Correct?      5 A. Yes.      6 Q. Can you reference the last page, please? The      7 second to the last bullet point, beginning "I tried,"      8 can you read that, please?      9 A. I have an extra page on this.      10 Q. Which bullet? The second to the last bullet,      11 "I tried presenting."      12 A. "I tried presenting several different things      13 such as ABCs rolling terms. He shot all of this      14 down. He does not want to do anything to get a rebate      15 since he feels this goes against the Stark laws and      16 ya'll are going to get people sent to jail."      17 Q. I had to ask about this one. What do you      18 think he is talking about?      19 MR. TRETTER: I think he is a little bit      20 stark himself.      21 THE WITNESS: Again, this was in Todd's site      22 note, and he just directly quoted what a customer</p>
<p>1 because it has COIN and total, OTN and total, and COIN      2 must be their pricing.      3 Q. So COIN, to your knowledge —      4 A. It must be a connection to NSS.      5 Q. It doesn't jump out as an acronym for one of      6 the other competitors that you are competing with?      7 A. No, but NSS is.      8 Here it is a comparison, on these pages. It      9 doesn't look like it connects with the others.      10 Q. The next document is Exhibit Peterson 027 —      11 A. I would like to go on record, though, that      12 these documents don't look like they belong together.      13 Q. The last three pages don't look like they      14 belong with the prior document?      15 A. No, no.      16 Q. Okay. That's helpful. Thanks.      17 (Marked Deposition Exhibit Peterson 027.)      18 (Recess.)      19 Q. Exhibit Peterson 027 is BMS/AWP 0014883889 to 3891.      20 Would you identify this for the record, please?      21 A. An email from Todd Little to recap Marsha      22 Peterson, Louise Lim and Edwin Klug.</p>	<p>223</p> <p>1 said. I remember when I actually read this, and I      2 actually talked to Todd and said does he understand      3 what the Stark law is? It's obvious he doesn't. So      4 customers make comments a lot of times and they will      5 make them offhand.      6 Q. And that's because Stark doesn't relate to      7 rebates, correct?      8 A. That's correct.      9 (Marked Deposition Exhibit Peterson 028,      10 Exhibit Peterson 029, Exhibit Peterson 030, Exhibit      11 Peterson 031.)      12 Q. Exhibit Peterson 028, for the record, is      13 BMS/AWP 0014883808 to 3813.      14 Could you please identify this for the      15 record?      16 A. An email from Mike Brushbold to myself and      17 others on Horizon's West Medical Group with an      18 attached site note.      19 Q. And this was produced from your email or your      20 electronic files, correct?      21 A. Yes.      22 Q. Next is Exhibit Peterson 029. For the record its</p>

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## 58 (Pages 226 to 229)

<p>1 BMS/AWP 001488181 to 8183. Can you identify this for 2 the record, please?</p> <p>3 A. An email from Craig Wilson to myself and 4 others for Dr. Giangreco, attached site note.</p> <p>5 Q. Who prepared this site note?</p> <p>6 A. Craig Wilson.</p> <p>7 Q. And this was produced out of your email or 8 your electronic files. Correct?</p> <p>9 A. Yes.</p> <p>10 Q. Under Meeting Notes, it says, "discussed 11 generic Taxol." Would you read that?</p> <p>12 A. "Discussed generic Taxol. They do not want 13 to switch. I told Meiva that we are constantly 14 lowering the cost of Taxol and that AWP is still 15 strong. She will stay with OTN."</p> <p>16 Q. "AWP is still strong," what does that mean? 17 Do you believe it refers to reimbursement?</p> <p>18 A. I don't think it refers to a reimbursement, I 19 think it's just a comment on the price of Taxol, and I 20 would say the customer price said something about AWP.</p> <p>21 Q. The fact is Mr. Wilson is referring to the 22 difference between AWP and the Taxol, correct?</p>	226	<p>1 Exhibit Peterson 030, BMS/AWP 001483218 to 83281.</p> <p>2 Please identify this for the record.</p> <p>3 MR. TRETTER: Is this all one document?</p> <p>4 MR. MATT: This is the way it was produced.</p> <p>5 MR. TRETTER: That doesn't mean anything. I 6 don't believe, Ms. Peterson, that after the page that 7 has the Bates numbers 3227 at the bottom, that there 8 is any text. I think it's just computer characters.</p> <p>9 THE WITNESS: Okay. Let's go back.</p> <p>10 Q. Is this a business plan that you sent to 11 Gena?</p> <p>12 A. It appears to be a business plan. It's just. 13 that it's all run together. It's hard to see. It 14 appears to be.</p> <p>15 Q. To the best of your knowledge was this 16 produced out of your email files or your electronic 17 files?</p> <p>18 A. Probably out of my email files.</p> <p>19 Q. There are several pages of text that we can 20 read, if we wanted to read all of it. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. I wanted to draw your attention to the page</p>	228
<p>1 A. He doesn't refer to a difference, he just 2 refers to the cost of Taxol, and that AWP is strong. 3 He doesn't refer to any difference.</p> <p>4 Q. What is the relevancy of "AWP is still 5 strong"?</p> <p>6 A. I have no idea.</p> <p>7 Q. What is your guess, based on your many years 8 of experience at OTN?</p> <p>9 A. That AWP has not changed.</p> <p>10 Q. Why is that relevant?</p> <p>11 A. I really can't tell by the context of this.</p> <p>12 Q. Would you disagree with the interpretation 13 that Mr. Wilson was pointing out that the cost of 14 Taxol is going down while the reimbursements for Taxol 15 is still strong?</p> <p>16 A. I would say that he said AWP is still 17 strong. He didn't say "reimbursement."</p> <p>18 Q. Do you disagree with the interpretation?</p> <p>19 A. I really don't know the interpretation so I 20 can't disagree or agree.</p> <p>21 Q. Okay, thank you. No further questions on 22 that.</p>	227	<p>1 3226. There is a paragraph beginning "education" 2 right there. Could you read that into the record?</p> <p>3 A. "Education regarding oncology drugs. I will 4 be assigning each TBDM a different group of drugs to 5 take responsibility for topics. The product info, 6 profitability, manufacturer information, and 7 contracting, positioning, rebates, programs, 8 reimbursement, et cetera. Grouping to be determined. 9 The following is start at the break outs."</p> <p>10 Q. You can stop there. The word 11 "profitability," what does that reference?</p> <p>12 A. That is OTN profitability on a particular 13 drug.</p> <p>14 Q. What does "reimbursement" reference?</p> <p>15 A. Reimbursement is referencing if there are 16 specific reimbursement programs offered by the 17 manufacturer. Its education on a drug specific to.</p> <p>18 Q. As in whether its reimbursed or not?</p> <p>19 A. No. Since this is education regarding 20 oncology drugs, different manufacturers have 21 reimbursement programs, so its referring to if that 22 manufacturer has a reimbursement program or not. It's</p>	229

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<p>230</p> <p>1 just education.</p> <p>2 Q. No more questions on that one.</p> <p>3 Exhibit Peterson 031, for the record it's Bates</p> <p>4 numbers BMS/AWP 001483343 to 3366. Is this an email</p> <p>5 that you created?</p> <p>6 MR. TRETTER: Do you mean the first part?</p> <p>7 MR. MATT: The first part.</p> <p>8 THE WITNESS: The first page is an email from</p> <p>9 myself to Julie Trueblood.</p> <p>10 Q. And the second part of the document, what is</p> <p>11 this?</p> <p>12 A. This is a spreadsheet, and its several</p> <p>13 different spreadsheets kind of run along a lot of</p> <p>14 different pages, and it is a proposal to Orange Coast</p> <p>15 Oncology Hematology Associates, a pricing proposal.</p> <p>16 Q. Did you prepare this?</p> <p>17 A. I prepared this along with Julie Trueblood.</p> <p>18 Q. And the page ending Bates No. 3349, what</p> <p>19 information is presented on this page?</p> <p>20 A. What this is is a small section of one tab in</p> <p>21 a spreadsheet which is an internal document only which</p> <p>22 is doing a margin analysis and profitability on this</p>	<p>232</p> <p>1 analysis regarding OTN pricing contracts and</p> <p>2 chargebacks.</p> <p>3 Q. To the best of your knowledge was it produced</p> <p>4 out of your electronic files?</p> <p>5 A. It was in my electronic files. I did not</p> <p>6 author it.</p> <p>7 Q. It was produced for purposes of the</p> <p>8 litigation?</p> <p>9 A. Yes, yes.</p> <p>10 Q. Do you know who did author it?</p> <p>11 A. No, I do not.</p> <p>12 Q. Were you present at a presentation in which</p> <p>13 this was presented?</p> <p>14 A. No, I was not.</p> <p>15 It is also, for the record, an older</p> <p>16 document. It doesn't have a date on it.</p> <p>17 Q. It looks like the third page says "2002</p> <p>18 objectives." That might help you with its era.</p> <p>19 Look at the Bates number ending 7922, please.</p> <p>20 A. 79 what?</p> <p>21 Q. 7922.</p> <p>22 A. I see.</p>
<p>231</p> <p>1 customer for OTN.</p> <p>2 Q. The margin for OTN?</p> <p>3 A. OTN margin and profitability. It's an</p> <p>4 internal document.</p> <p>5 Q. And this part is not provided as part of the</p> <p>6 presentation to the potential client, correct?</p> <p>7 A. No, it is not.</p> <p>8 Q. What is the advantage program?</p> <p>9 A. The advantage program is a pricing program to</p> <p>10 an OTN customer that commits a certain percentage of</p> <p>11 their business to OTN, so it's a very good pricing</p> <p>12 program, a premier pricing program.</p> <p>13 Q. Who is NOA?</p> <p>14 A. NOA is National Oncology Alliance.</p> <p>15 Q. Is that a GPO?</p> <p>16 A. That's a GPO, yes. I'm sorry.</p> <p>17 (Marked Deposition Exhibit Peterson 032.)</p> <p>18 Q. For the record, this is Bates No. BMS/AWP</p> <p>19 001487918. The last Bates No. is 7940. Could you</p> <p>20 identify this for the record, please?</p> <p>21 A. This looks like a PowerPoint presentation put</p> <p>22 together by customer profitability and business</p>	<p>233</p> <p>1 Q. There is a bold point there that says</p> <p>2 "managed BMS pricing." Do you know what that refers</p> <p>3 to?</p> <p>4 A. Because I wasn't present at it or didn't</p> <p>5 create it I can only deduce that since it is from</p> <p>6 customer profitability and business analysis, that</p> <p>7 group manages BMS pricing and that would be in the</p> <p>8 system.</p> <p>9 Q. Within the system?</p> <p>10 A. Within the internal workings of the system.</p> <p>11 Q. No further questions on that.</p> <p>12 (Marked Deposition Exhibit Peterson 033.)</p> <p>13 Q. For the record, Exhibit Peterson 033 is Bates</p> <p>14 No. BMS /AWP 001487857 to 7882. Can you identify this</p> <p>15 for the record, please?</p> <p>16 A. This is a PowerPoint presentation presented</p> <p>17 to Orange Coast Oncology Hematology by myself and</p> <p>18 Julie and Warren.</p> <p>19 Q. Who was in attendance?</p> <p>20 A. Two gentlemen from Orange Coast Hematology</p> <p>21 that we presented to.</p> <p>22 Q. On page number 7872, do you see the first</p>

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<p>1 bullet point, 125 working Lynx system interfaces?</p> <p>2 A. Yes.</p> <p>3 Q. Does that mean there are 125 screens being</p> <p>4 proposed for this client?</p> <p>5 A. No.</p> <p>6 Q. What does that mean?</p> <p>7 A. That means that there are 125 different Lynx</p> <p>8 systems that are interfaced. And an interface is</p> <p>9 where we actually interface the Lynx system to either</p> <p>10 their scheduling or billing systems internally in the</p> <p>11 practice, so it's a computer interface.</p> <p>12 (Marked Deposition Exhibit Peterson 034.)</p> <p>13 Q. For the record, Exhibit Peterson 034 to your</p> <p>14 deposition is Bates No. BMS/A WP/001483047 to 3061.</p> <p>15 Can you identify for the record what this is?</p> <p>16 A. This is an ARDM, education and training</p> <p>17 checklist, which was developed by Craig Wilson for the</p> <p>18 training of RBDMs.</p> <p>19 Q. To the best of your knowledge was this</p> <p>20 produced out of your electronic files?</p> <p>21 A. Yes.</p> <p>22 Q. I will call your attention to general</p>	234	<p>1 (Deposition concluded at 5:07 p.m.)</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	236
<p>1 information there, number 2.</p> <p>2 A. Yes.</p> <p>3 Q. Could you read that, please?</p> <p>4 A. "BMS V mail proprietary system for all BMS</p> <p>5 employees, check daily."</p> <p>6 Q. Do you have a BMS voice mail?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have an OTN voice mail?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have a BMS email address?</p> <p>11 A. No.</p> <p>12 Q. Just an OTN email address?</p> <p>13 A. Yes.</p> <p>14 Q. Why do you have both an OTN voice mail and a</p> <p>15 BMS voice mail?</p> <p>16 A. We have a BMS voice mail because we are owned</p> <p>17 by BMS and there are many times BMS-wide voice mails</p> <p>18 go out to the employee base for HR purposes or</p> <p>19 whatever, so we need to check that voice mail.</p> <p>20 MR. MATT: Ms. Peterson, I don't have any</p> <p>21 further questions for you. Thank you for coming in.</p> <p>22 MR. TRETTER: I have no questions.</p>	235	<p>1 C E R T I F I C A T E</p> <p>2 STATE OF WASHINGTON )</p> <p>3 ) ss.</p> <p>3 COUNTY OF KING )</p> <p>1, the undersigned Certified Shorthand</p> <p>4 Reporter and an officer of the Court under my</p> <p>5 commission as a Notary Public for the State of</p> <p>6 Washington, hereby certify that the foregoing</p> <p>7 deposition upon oral examination of Marsha Peterson</p> <p>8 was taken before me on April 13, 2005, and transcribed</p> <p>8 under my direction;</p> <p>9 That the witness was duly sworn by me to</p> <p>10 testify truthfully; that the transcript of the</p> <p>11 deposition is a full, true, and correct transcript to</p> <p>12 the best of my ability; that I am neither attorney</p> <p>13 for, nor a relative or employee of, any of the parties</p> <p>14 to the action or any attorney or counsel employed by</p> <p>15 the parties hereto, nor financially interested in its</p> <p>16 outcome.</p> <p>17 IN WITNESS WHEREOF, I have hereunto set my</p> <p>18 hand and seal this 25th day of April, 2005.</p> <p>19 SJULIECOSWALD</p> <p>20 NOTARY PUBLIC in and for the State of Washington,</p> <p>21 residing at Seattle. Commission expires November 11,</p> <p>22 2007.</p>	237

# EXHIBIT 19

## Memorandum



*Nick  
For your files*

To: List *ST* Date: May 28, 1993  
 From: S. Tamif *ST* C.C.: N. DiMaio  
 Subject: LIST PRICE INCREASE  
 ORAL ANTIBIOTICS

Per the 1994-98 Strategic Plan, Apothecon is planning to delete Polymox, Betapen and Polycillin-O. These products will be consolidated into the Trimox, Veetids and Principen line. This action is primarily driven by the need to reduce the number of products, SKU's and inventory in accordance with Operation Kick Start. In total, Apothecon will be deleting over 125 SKU's.

The decision for a pharmacy to purchase oral antibiotics is often more determined by third party reimbursement than acquisition price. Historically, third party payor's reimbursement was based on average wholesale price (AWP) as reported by Red Book or 1st Data Bank. A pharmacy which purchased amoxicillin at \$40, which carried an AWP of \$100, would have been reimbursed \$60 by many traditional plans offered by such carriers as Prudential or Aetna.

AWP management strategies have been key to successfully marketing the Apothecon line of antibiotics. Apothecon has kept two lines with two distinct AWPs:

1. Polymox, Betapen and Polycillin-O are considered branded products and maintain the highest AWP in the marketplace. The upside is the high AWP allows for maximum reimbursement. The downside is that many third party plans exclude these products because of high AWP. Fewer plans allow for dispensing of these brands each year.
2. Trimox, Veetids and Principen are considered generics and carry lower AWP's. The upside is all third party plans allow for the use of these products. The downside is that the pharmacy reimbursement levels are lower than Polymox, Betapen and Polycillin-O.

On-going healthcare reform has made the dual AWP strategy less appealing. Many plans now disallow Polymox, Betapen and Polycillin-O. In addition, many third party plans and state programs have created maximum allowable costs (MAC's) which reimburse based on a ceiling and disregards AWP altogether.

The reimbursement climate has shifted sufficiently for Apothecon to delete Polymox, Betapen and Polycillin-O. The value of reduced SKU's, inventory and dual manufacturing now out-weighs the benefit of the reimbursement logic.

Apothecon must now develop a one line (Trimox, Veetids and Principen) AWP strategy that maximizes its Marketing efforts. To do this, a new AWP for the remaining products must be set in the middle of the two lines (e.g. higher than Trimox but lower than Polymox).

Mechanically the way to accomplish this is to raise the list price (list price + 25% = AWP) of Trimox, Veetids and Betapen. This is a list price change only. The average selling price of the products will not change. However, the data services will report this as a Bristol-Myers Squibb list price increase.

BMY/PLB/012/092/000423



A Bristol-Myers Squibb Company

X

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BMS-0074025

BMSAWP/0041865

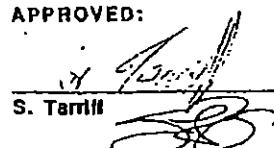
HIGHLY CONFIDENTIAL

If the price increase does not occur, then Apothecon will not delete the Polymox line, but will delete Betapen and Polycillin-O which are much smaller parts of the line.

Your approval to increase the list price of Trimox, Veetids and Principen as outlined in the attached table is recommended.

APPROVED:

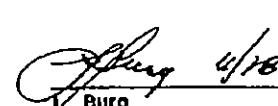
S. Tamill

  
7/6/93

Verbal Approval from SLB 6/28/93

S. Barker

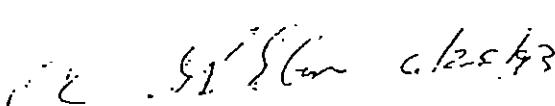
L. Burg

 4/18

STWHS  
Attachment

List:

S. Barker  
L. Burg

  
OK  6/30/93

EMY/PLB/012/b92/0000424

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BMS-0074026

BMSAWP/0041866

HIGHLY CONFIDENTIAL

<b>Amoxicillin</b>					
0003-0101-50	Trimox 250mg 100's caps	\$18.96	\$19.91	5%	\$24.89
0015-7278-60	Polymox 250mg 100's caps	\$27.70	deleted		
0003-0101-51	Trimox 250mg 100's caps UNI	\$18.96	\$19.91	5%	\$24.89
0015-7278-66	Polymox 250mg 100's caps UNI	\$29.75	deleted		
0003-0101-60	Trimox 250mg 500's caps	\$90.30	\$94.82	5%	\$118.52
0015-7278-60	Polymox 250mg 500's caps	\$133.73	deleted		
0003-0109-45	Trimox 500mg 50's caps	\$17.72	\$18.61	5%	\$23.26
0015-7279-50	Polymox 500mg 50's caps	\$26.64	deleted		
0003-0109-55	Trimox 500mg 100's caps	-	\$34.73		\$43.41
0015-7279-60	Polymox 500mg 100's caps	\$48.91	deleted		
0003-0109-51	Trimox 500mg 100's caps UNI	\$35.45	\$37.22	5%	\$48.53
0015-7279-66	Polymox 500mg 100's caps UNI	\$50.93	deleted		
0003-0109-60	Trimox 500mg 500's caps	\$145.00	\$152.25	5%	\$190.31
0015-7279-80	Polymox 500mg 500's caps	\$138.38	deleted		
0003-1738-15	Trimox Pediatric Drops	-	\$2.99		\$3.74
0015-7277-16	Polymox Pediatric Drops	\$3.11	deleted		
0003-1737-30	Trimox 125mg/5ml 80ml O/S	\$2.38	\$2.48	5%	\$3.10
0015-7276-35	Polymox 125mg/5ml 80ml O/S	\$4.81	deleted		
0003-1737-40	Trimox 125mg/5ml 100ml O/S	\$2.71	\$2.85	5%	\$3.56
0015-7276-41	Polymox 125mg/5ml 100ml O/S	\$5.88	deleted		
0003-1737-45	Trimox 125mg/5ml 150ml O/S	\$3.13	\$3.29	5%	\$4.11
0015-7276-50	Polymox 125mg/5ml 150ml O/S	\$6.62	deleted		
0003-1738-30	Trimox 250mg/5ml 80ml O/S	\$4.05	\$4.25	5%	\$5.32
0015-7277-35	Polymox 250mg/5ml 80ml O/S	\$7.04	deleted		
0003-1738-40	Trimox 250mg/5ml 100ml O/S	\$4.64	\$4.87	5%	\$6.09
0015-7277-41	Polymox 250mg/5ml 100ml O/S	\$7.78	deleted		
0003-1738-25	Trimox 250mg/5ml 150ml	\$5.38	\$5.65	5%	\$7.06
0015-7277-79	Polymox 250mg/5ml 150ml	\$8.68	deleted		

Page 1

8MY/PLB/012/092/000425

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BMS-0074027

BMSAWP/0041867

HIGHLY CONFIDENTIAL

<b>Ampicillin</b>						
0003-0122-50	Principen 250mg 100's caps	\$8.93	\$9.38	5%	\$11.72	
0015-7992-60	Polycillin 250mg 100's caps	\$15.47	deleted			
0003-0122-51	Principen 250mg 100's caps UNI	\$8.93	\$9.38	5%	\$11.72	
0015-7992-66	Polycillin 250mg 100's caps UNI	\$17.48	deleted			
0003-0122-60	Principen 250mg 500's caps	\$31.65	\$33.23	5%	\$41.54	
0015-7992-80	Polycillin 250mg 500's caps	\$74.57	deleted			
0003-0134-50	Principen 500mg 100's caps	\$13.49	\$14.16	5%	\$17.71	
0015-7993-60	Polycillin 500mg 100's caps	\$27.60	deleted			
0003-0134-51	Principen 500mg 100's caps UNI	\$13.49	\$14.16	5%	\$17.71	
0015-7993-66	Polycillin 500mg 100's caps UNI	\$29.62	deleted			
0003-0134-60	Principen 500mg 500's caps	\$57.76	\$60.65	5%	\$75.81	
0015-7993-80	Polycillin 500mg 500's caps	\$133.17	deleted			
0003-0969-09	Principen 125mg/5ml 100ml O/S	\$1.75	\$1.84	5%	\$2.30	
0015-7988-40	Polycillin 125mg/5ml 100ml O/S	\$2.98	deleted			
0003-0969-52	Principen 125mg/5ml 150ml O/S	\$2.45	\$2.57	5%	\$3.22	
0015-7988-50	Polycillin 125mg/5ml 150ml O/S	\$3.83	deleted			
0003-0969-61	Principen 125mg/5ml 200ml O/S	\$3.04	\$3.19	5%	\$3.99	
0015-7988-64	Polycillin 125mg/5ml 200ml O/S	\$4.81	deleted			
0003-0972-52	Principen 250mg/5ml 100ml O/S	\$2.34	\$2.46	5%	\$3.07	
0015-7884-40	Polycillin 250mg/5ml 100ml O/S	\$4.04	deleted			
0003-0972-47	Principen 250mg/5ml 150ml O/S	\$3.86	\$4.05	5%	\$5.07	
0015-7998-50	Polycillin 250mg/5ml 150ml O/S	\$5.88	deleted			
0003-0972-61	Principen 250mg/5ml 200ml O/S	\$4.67	\$4.90	5%	\$6.13	
0015-7998-64	Polycillin 250mg/5ml 150ml O/S	\$8.94	deleted			

BMY/PLB/012/092/0000426

Page 2

Trade Secret / FOIA Confidential

BMS-0074028

BMSAWP/0041868

HIGHLY CONFIDENTIAL

Particulars					
0003-0681-44	Veetids 125mg/5ml 100ml O/S	\$1.32	\$1.39	5%	\$1.73
0015-7506-40	Betapen 125mg/5ml 100ml O/S	\$1.98	deleted		
0003-0681-54	Veetids 125mg/5ml 200ml O/S	\$2.28	\$2.39	5%	\$2.99
0015-7506-64	Betapen 125mg/5ml 200ml O/S	\$2.89	deleted		
0003-0682-44	Veetids 250mg/5ml 100ml O/S	\$1.71	\$1.80	5%	\$2.24
0015-7507-40	Betapen 250mg/5ml 100ml O/S	\$2.70	deleted		
0003-0682-54	Veetids 250mg/5ml 200ml O/S	\$2.89	\$3.03	5%	\$3.79
0015-7507-64	Betapen 250mg/5ml 200ml O/S	\$4.42	deleted		
0003-0115-50	Veetids 250mg 100's tabs	\$5.43	\$5.70	5%	\$7.13
0015-7508-60	Betapen 250mg 100's tabs	\$8.76	deleted		
0003-0115-75	Veetids 250mg 1000's tabs	\$45.59	\$47.87	5%	\$59.84
0015-7508-90	Betapen 250mg 1000's tabs	\$49.55	deleted		
0003-0116-50	Veetids 500mg 100's tabs	\$10.32	\$10.84	5%	\$13.55
0015-7509-60	Betapen 500mg 100's tabs	\$12.42	deleted		
0003-0116-75	Veetids 500mg 1000's tabs	\$73.77	\$77.48	5%	\$98.82
0015-7509-80	Betapen 500mg 1000's tabs	\$61.80	deleted		

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